

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION  
4   IN RE:   NATIONAL                   :   MDL No. 2804  
5   PRESCRIPTION OPIATE               :  
6   LITIGATION                         :   Case No. 17-md-2804  
7   :  
8   APPLIES TO ALL CASES               :   Hon. Dan A. Polster  
9   :  
10                                        :  
11                                        :

12                   HIGHLY CONFIDENTIAL  
13                   SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

14                                       - - - -  
15                                       JANUARY 22, 2019  
16                                       - - - -

17           VIDEOTAPED DEPOSITION OF FRED BENCIVENGO,  
18   taken pursuant to notice, was held at Marcus &  
19   Shapira, One Oxford Center, 35th Floor,  
20   Pittsburgh, Pennsylvania 15219, by and before Ann  
21   Medis, Registered Professional Reporter and Notary  
22   Public in and for the Commonwealth of  
23   Pennsylvania, on Tuesday, January 22, 2019,  
24   commencing at 2:08 p.m.

25                                       - - - -  
26                                       GOLKOW LITIGATION SERVICES  
27                                       877.370.3377 ph | 917.591.5672 fax  
28                                       deps@golkow.com

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<p>1 A P P E A R A N C E S</p> <p>2 On behalf of Plaintiffs</p> <p>3 WAGSTAFF &amp; CARTMELL, LLP</p> <p>4 BY: TYLER HUDSON, ESQUIRE</p> <p>5 4740 Grand Avenue, Suite 300</p> <p>6 Kansas City, Missouri 64112</p> <p>7 816.701.1100</p> <p>8 thudson@wcllp.com</p> <p>9 On behalf of Defendant AmerisourceBergen Drug Corporation</p> <p>10 (By Phone/Livestream)</p> <p>11 JACKSON KELLY, LLP</p> <p>12 BY: ANDREW N. SCHOCK ESQUIRE</p> <p>13 50 South Main Street, Suite 201</p> <p>14 Akron, Ohio 44308</p> <p>15 330.252.9078</p> <p>16 anschock@jacksonkelly.com</p> <p>17 On behalf of Defendant Cardinal Health, Inc.</p> <p>18 PIETRAGALLO GORDON ALFANO BOSICK &amp; RASPANTI, LLP</p> <p>19 BY: JOHN A. SCHWAB, ESQUIRE</p> <p>20 One Oxford Centre, 38th Floor</p> <p>21 301 Grant Street</p> <p>22 Pittsburgh, Pennsylvania 15219</p> <p>23 412.263.2000</p> <p>24 jas@pietragallo.com</p> <p>25 On behalf of Defendants Endo Pharmaceuticals, Endo Health Solutions and Par Pharmaceuticals</p> <p>(By Phone/Livestream)</p> <p>ARNOLD &amp; PORTER KAYE SCHOLER LLP</p> <p>BY: JAKE MILLER, ESQUIRE</p> <p>777 South Figueroa Street</p> <p>Los Angeles, CA 90017-5844</p> <p>213.243.4000</p> <p>jake.miller@arnoldporter.com</p>	<p>1 * I N D E X *</p> <p>2 FRED BENCIVENGO PAGE</p> <p>3 EXAMINATION BY MR. HUDSON 7, 170, 180</p> <p>4 EXAMINATION BY MR. KOBRIN 156, 179</p> <p>5 * INDEX OF HBC-BENCIVENGO EXHIBITS *</p> <p>6 NO. DESCRIPTION PAGE</p> <p>7 Exhibit 1 Giant Eagle Retail Operations - 19</p> <p>8 Pharmacy Operations 11/13/14</p> <p>9 org chart</p> <p>10 HBC_MDL00002216</p> <p>11 Exhibit 2 Giant Eagle Retail Operations - 19</p> <p>12 Pharmacy Operations 6/1/15</p> <p>13 org chart</p> <p>14 HBC_MDL0002222</p> <p>15 Exhibit 3 Email, 6/26/13, from S. Cook to 68</p> <p>16 A. Anthony, et al., subject:</p> <p>17 Giant Eagle CSMP - 06/26/2013,</p> <p>18 attaching CSMP Giant Eagle</p> <p>19 Threshold Report 062613.xlsx</p> <p>20 HBC_MDL00136237 - 00136238</p> <p>21 Exhibit 4 Email, 7/16/13, from S. Medina 72</p> <p>22 to A. Anthony, et al., subject:</p> <p>23 Giant Eagle CSMP 07.16.13</p> <p>24 attaching Giant Eagle CSMP</p> <p>25 07.16.13.xlsx</p> <p>HBC_MDL00079510 - 00079511</p> <p>Exhibit 5 Email, 7/16/13, from S. Medina 72</p> <p>to A. Anthony, et al., subject:</p> <p>Giant Eagle CSMP 07.17.13</p> <p>attaching Giant Eagle CSMP</p> <p>07.17.13.xlsx</p> <p>HBC_MDL00079386 - 00079387</p> <p>Exhibit 6 Email, 7/18/13, from S. Medina 72</p> <p>to A. Anthony, et al., subject:</p> <p>Giant Eagle CSMP, attaching</p> <p>Giant Eagle CSMP 07.18.13.xlsx</p> <p>HBC_MDL00079491 - 00079492</p>
Page 3	Page 5
<p>1 A P P E A R A N C E S (Continued)</p> <p>2 On behalf of Defendant HBC Service Company</p> <p>3 MARCUS &amp; SHAPIRA, LLP</p> <p>4 BY: JOSHUA A. KOBRIN, ESQUIRE</p> <p>5 One Oxford Centre, 35th Floor</p> <p>6 Pittsburgh, Pennsylvania 15219</p> <p>7 412.471.3490</p> <p>8 kobrin@marcus-shapira.com</p> <p>9 On behalf of Defendant McKesson Corporation</p> <p>10 COVINGTON &amp; BURLING, LLP</p> <p>11 BY: MEGHAN MONAGHAN, ESQUIRE</p> <p>12 One CityCenter</p> <p>13 850 Tenth Street, NW</p> <p>14 Washington, DC 20001-4956</p> <p>15 202.662.5807</p> <p>16 mmonaghan@cov.com</p> <p>17 On behalf of Defendant Walmart</p> <p>18 (By phone/Livestream)</p> <p>19 JONES DAY</p> <p>20 BY: RICHARD M. BRODSKY, ESQUIRE</p> <p>21 150 West Jefferson Avenue, Suite 2100</p> <p>22 Detroit, Michigan 48226</p> <p>23 313.230.7699</p> <p>24 rbrodsky@jonesday.com</p> <p>25 Also present</p> <p>Tyler Crotty, legal videographer</p>	<p>1 * INDEX OF HBC-BENCIVENGO EXHIBITS (Continued) *</p> <p>2 NO. DESCRIPTION PAGE</p> <p>3 Exhibit 7 Email, 7/22/13, from S. Medina 72</p> <p>4 to A. Anthony, et al., subject:</p> <p>5 Giant Eagle CSMP 7/22,</p> <p>6 attaching Giant Eagle CSMP</p> <p>7 07.22.13.xlsx</p> <p>8 HBC_MDL00079213 - 00079214</p> <p>9 Exhibit 8 Email, 10/18/13, from F1 Batch 72</p> <p>10 User to S. Cook, et al., subject:</p> <p>11 Email of DEA Threshold Warning</p> <p>12 Report_8164, attaching DEA</p> <p>13 Threshold Warning Report_8164.xls</p> <p>14 HBC_MDL00174476 - 00174477</p> <p>15 Exhibit 9 Email chain, 7/1/08, from D. 77</p> <p>16 Casar to J. Liliestadt, et al.,</p> <p>17 subject: RE: Vicodin quota ????????</p> <p>18 HBC_MDL00179373 - 00179374</p> <p>19 Exhibit 10 Conference call invitation, 90</p> <p>20 1/9/13, from G. Chunderlik to</p> <p>21 J. Millward, et al., subject:</p> <p>22 Narcotic Audit Application,</p> <p>23 attaching requirements for the</p> <p>24 application</p> <p>25 HBC_MDL00041837 - 00041850</p> <p>Exhibit 11 Copy of Narcotic of Audit Chain 103</p> <p>Discrepancies Summary_07-01-13</p> <p>HBC_MDL00032853 (native)</p> <p>Exhibit 12 Copy of Narcotic of Audit Chain 103</p> <p>Discrepancies Summary_October 2013</p> <p>HBC_MDL00032878 (native)</p> <p>----</p>

<p style="text-align: right;">Page 6</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p style="text-align: center;">- - - -</p> <p>THE VIDEOGRAPHER: We are now on the record. I'm a videographer retained by Golkow Litigation Services. Today's date is Tuesday, January 22, 2019, and the time is 2:08 p.m.</p> <p>This video deposition is being held at One Oxford Centre, Pittsburgh, PA, in the matter of National Prescription Opiate Litigation MDL, for the Northern District of Ohio.</p> <p>The deponent is Fred Bencivengo.</p> <p>Will counsel please identify themselves and state whom they represent.</p> <p>MR. HUDSON: Ty Hudson of Wagstaff &amp; Cartmell for plaintiffs.</p> <p>MS. MONAGHAN: Meghan Monaghan from Covington &amp; Burling on behalf of McKesson.</p> <p>MR. SCHWAB: John Schwab on behalf of Cardinal.</p> <p>MR. KOBRIN: Josh Kobrin of Marcus &amp; Shapira, on behalf of HBC Service Company.</p> <p>THE VIDEOGRAPHER: And counsel on the phone, please identify yourselves.</p> <p>MR. BRODSKY: This is Richard Brodsky from Jones Day on behalf of Walmart.</p>	<p style="text-align: right;">Page 8</p> <p>A. Once.</p> <p>Q. And what was the nature of that case?</p> <p>A. It was an overdose actually on methadone, and I was an expert witness for the defense.</p> <p>Q. And when was that, how long ago?</p> <p>A. In the middle '90s.</p> <p>Q. Well, it's been a little while. So I'll just make sure that we understand the ground rules. I'm going to be asking questions. From time to time counsel may object. Unless your counsel instructs you not to answer, will you agree to answer my questions?</p> <p>A. Yes.</p> <p>Q. And if you don't understand my question, will you let me know so I can rephrase it?</p> <p>A. Sure.</p> <p>Q. Is it fair that if you answer my question, I can assume that you understood it?</p> <p>A. Yeah.</p> <p>COUNSEL ON PHONE: Can others confirm, is the text working for them on the live feed? Because it's not working for me.</p> <p>THE VIDEOGRAPHER: We are going off the record. The time is 2:11 p.m.</p>
<p style="text-align: right;">Page 7</p> <p>MR. MILLER: Hi. This is Jake Miller from Arnold &amp; Porter on behalf of the Endo and Par defendants. I don't know if others on the phone are having this issue, but at least for me, the realtime feed does not appear to be working. I'm not seeing any text generated on the screen.</p> <p>MR. SCHOCK: This is Andrew Schock of Jackson Kelly for the AmerisourceBergen Drug Corporation.</p> <p>THE VIDEOGRAPHER: The court reporter is Ann Medis, and she will now swear in the witness.</p> <p style="text-align: center;">FRED BENCIVENGO,</p> <p>having been first duly sworn, was examined and testified as follows:</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. HUDSON:</p> <p>Q. Sir, could you please state your full name for the record.</p> <p>A. Fred Bencivengo.</p> <p>Q. And what is your current address?</p> <p>A. 3556 Layer Road in Warren, Ohio.</p> <p>Q. Have you ever had your deposition taken before?</p> <p>A. Yes.</p> <p>Q. How many times?</p>	<p style="text-align: right;">Page 9</p> <p>(Recess from 2:11 p.m. to 2:21 p.m.)</p> <p>THE VIDEOGRAPHER: We're going back on the record. The time is 2:21 p.m.</p> <p>BY MR. HUDSON:</p> <p>Q. Mr. Bencivengo, did I pronounce that correctly?</p> <p>A. Yes.</p> <p>Q. You understand that you're under oath?</p> <p>A. Yes.</p> <p>Q. You're swearing to tell the truth just like you would if you were in a courtroom in front of a judge and a jury?</p> <p>A. Yes.</p> <p>Q. You're doing a good job of this, but if you could, just give audible answers as opposed to nonverbal nods or things like that.</p> <p>A. Okay.</p> <p>Q. And then lastly, if you need to take a break at any time, just let me know, and we can go off the record. All I would ask, if there's a pending question, you answer that before we go off the record; is that fair?</p> <p>A. Yes.</p> <p>Q. What did you do to prepare for the deposition today?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. Met with counsel.</p> <p>2 Q. Approximately how many hours did you</p> <p>3 meet?</p> <p>4 A. With breaks and lunch, probably about</p> <p>5 seven hours.</p> <p>6 Q. Did you look at documents?</p> <p>7 A. Yes.</p> <p>8 Q. Before meeting with counsel for that</p> <p>9 seven-hour meeting, had you done anything else to</p> <p>10 prepare for this deposition?</p> <p>11 A. No.</p> <p>12 Q. Had you talked to anyone about this</p> <p>13 deposition?</p> <p>14 A. Josh.</p> <p>15 Q. Other than counsel.</p> <p>16 A. No, no.</p> <p>17 Q. I want to start then with your</p> <p>18 education. If you could, just describe where you</p> <p>19 went to college.</p> <p>20 A. I have a bachelor's degree in pharmacy.</p> <p>21 I got in 1992 from Ohio Northern University.</p> <p>22 Q. So explain to me what that degree is.</p> <p>23 Is that a pharmacy degree?</p> <p>24 A. At that time, it was a five-year degree;</p> <p>25 correct.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Why did you leave Conva-Med?</p> <p>2 A. They closed.</p> <p>3 Q. And why did they close?</p> <p>4 A. Some bad business deals from the owners.</p> <p>5 Q. Was there any sort of investigation by</p> <p>6 the DEA or others of the company?</p> <p>7 A. No. It was a typical independent</p> <p>8 closing. We just couldn't do it anymore, and we</p> <p>9 sold our files.</p> <p>10 Q. So when you mean bad business deals, you</p> <p>11 just mean like financially they just made</p> <p>12 decisions that caused them to lose money instead</p> <p>13 of make money?</p> <p>14 A. Yeah. The two owners were clashing.</p> <p>15 Q. We're starting to talk over each other,</p> <p>16 and I'm sometimes guilty of that, too. So if we</p> <p>17 could, as best you can, let me finish my question</p> <p>18 and then I will do my very best to let you finish</p> <p>19 your answer before we start talking because,</p> <p>20 otherwise, she's going to become very upset with</p> <p>21 us.</p> <p>22 So Conva-Med closed in 2000, and at that</p> <p>23 point, did you go to work for Giant Eagle?</p> <p>24 A. Yes.</p> <p>25 Q. And what was your first role at Giant</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And would you describe it as a pharmacy</p> <p>2 degree or degree from pharmacy school?</p> <p>3 A. It's a pharmacy school. I have a</p> <p>4 pharmacy degree.</p> <p>5 Q. After you received your pharmacy degree,</p> <p>6 what did you do?</p> <p>7 A. I worked for an independent from '92 up</p> <p>8 until 2000 in various roles. We had about four</p> <p>9 stores and their single pharmacy, mail order</p> <p>10 pharmacy. It split off. I managed the four</p> <p>11 stores. It split off to four stores of retail and</p> <p>12 one pretty nice size nursing home pharmacy. I got</p> <p>13 out of that part and became the operations</p> <p>14 director of the retail side.</p> <p>15 Q. What was the name of that company?</p> <p>16 A. Conva-Med, C-O-N-V-A-Med.</p> <p>17 Q. Where was that company located?</p> <p>18 A. We had four stores. The headquarters</p> <p>19 was out of Cornersburg; Cornersburg, Ohio,</p> <p>20 Austintown.</p> <p>21 Q. And is that where you were located?</p> <p>22 A. When we first started -- when we first</p> <p>23 started, we started in Brookfield, moved out to</p> <p>24 that location. Then my office got moved over down</p> <p>25 towards Youngstown.</p>	<p style="text-align: right;">Page 13</p> <p>1 Eagle?</p> <p>2 A. I was the pharmacy manager in the store</p> <p>3 in Ravenna, Ohio.</p> <p>4 Q. Say the name of the town again.</p> <p>5 A. Ravenna.</p> <p>6 Q. How long did you remain at that store?</p> <p>7 A. Until approximately the end of 2006.</p> <p>8 Q. And at that point, were you promoted to</p> <p>9 a pharmacy district leader?</p> <p>10 A. Correct.</p> <p>11 Q. What territory did you have in 2006 when</p> <p>12 you became a pharmacy district leader?</p> <p>13 A. The Akron/Canton area.</p> <p>14 Q. And do you remain in that role as a</p> <p>15 pharmacy district leader today?</p> <p>16 A. Yes.</p> <p>17 Q. Is pharmacy district leader sometimes</p> <p>18 referred to as a PDL?</p> <p>19 A. That's exactly what it is, yeah.</p> <p>20 Q. So if I use the acronym PDL, you'll know</p> <p>21 what I mean, pharmacy district leader?</p> <p>22 A. Yes.</p> <p>23 Q. Has your territory, PDL territory</p> <p>24 changed between 2006 and today?</p> <p>25 A. Actually, I'm back to the stores I was</p>

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1 in in 2006. But, yes, it's changed over the year.  
2 Q. If you could, just walk me through the  
3 evolution over that, I think, it's 12 years or so.  
4 A. Not hitting the dates correctly, I had  
5 had that territory probably for about two years.  
6 I took over the Youngstown/Erie, Pennsylvania  
7 region for a very small period of time. I went up  
8 in east Cleveland after that.  
9 Q. And the east Cleveland territory, how  
10 long did you have that?  
11 A. For a couple of years.  
12 Q. Do you have a ballpark on what those  
13 years would be?  
14 A. Probably from I want to say '15 maybe to  
15 '17.  
16 Q. And how about when you switched over to  
17 the territory in Pennsylvania, did you add those  
18 stores, or did you shift completely from Ohio to  
19 Pennsylvania?  
20 A. There's not enough stores in Erie, so I  
21 had Youngstown/warren. There was 13 or 14 stores  
22 there and then the five or six stores in Erie.  
23 Q. But all of those stores in Pennsylvania?  
24 A. Yeah. It was a split. There was like  
25 13 or 14 in Ohio, and the rest were in

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1 Pennsylvania.  
2 Q. And then in 2017, then you went back to  
3 the region that had the Akron?  
4 A. Yeah. They redraw the lines every once  
5 in a while, add stores, take stores away. But for  
6 the most part, the stores I have now were the  
7 stores I started at, for the most part.  
8 Q. So during the entire -- is it 12 years?  
9 Is that about right?  
10 A. Yes.  
11 Q. -- 12-year period, you were continuously  
12 covering stores in Ohio?  
13 A. Correct.  
14 Q. But for a couple of years you had -- you  
15 were added some stores in Ohio, I mean, in  
16 Pennsylvania as well; correct?  
17 A. Correct.  
18 Q. In terms of the State of Ohio, do you  
19 have a sense of how many pharmacies Giant Eagle  
20 has?  
21 A. Probably about -- I'm assuming about  
22 120, somewhere around there.  
23 Q. And of those, how many -- over your 12  
24 years, I know it's sort of fluctuated a little  
25 bit, how many of those Ohio pharmacies did you

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1 cover or have you covered?  
2 MR. KOBRIN: If you know.  
3 THE WITNESS: 60 to 80.  
4 BY MR. HUDSON:  
5 Q. And from 2006 until today, would you say  
6 the prescription volume of opioids has gone up,  
7 down or remained constant in that 12-year period?  
8 MR. KOBRIN: Object to form.  
9 THE WITNESS: I would say it went up,  
10 and now it's backing back down a little bit.  
11 BY MR. HUDSON:  
12 Q. And at what point would you say that it  
13 hit the height of the rise, I guess?  
14 A. I can't even assume that, but I can tell  
15 you that it started declining when they made --  
16 once they made Vicodin a CII.  
17 Q. So Vicodin is a hydrocodone combination  
18 product?  
19 A. Yes.  
20 Q. So when it was reclassified from a  
21 Schedule III to a Schedule II in October of 2014,  
22 you would say that that's sort of a point in time  
23 that you can point to where you felt like that  
24 changed?  
25 A. Changed prescribing habits.

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1 Q. And since that change, the amount of  
2 prescriptions for opioids, at least in your  
3 territory, has gone down?  
4 MR. KOBRIN: Object to form.  
5 THE WITNESS: I don't see that number,  
6 so I'm not going to -- I don't know.  
7 BY MR. HUDSON:  
8 Q. Well, you see the prescription volumes  
9 in your territory; right?  
10 A. I see a total number of prescriptions  
11 for the week, not broken down what they are.  
12 Q. Right. And that's all I was saying. As  
13 a whole, the opioids as a whole you --  
14 MR. KOBRIN: Object to form.  
15 THE WITNESS: The prescription volume as  
16 a whole with opioids being a small part of it  
17 along with everything else we dispense, I see it  
18 doing this (indicating).  
19 BY MR. HUDSON:  
20 Q. I guess my questions are focused on  
21 opioids. So for opioids -- and let's make it more  
22 precise and say opioid, the volume of  
23 prescriptions being filled by Giant Eagle  
24 pharmacy.  
25 So in your role as a PDL in your territories



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1 in Ohio, over the 12-year period that you've been  
2 in that role, would you say that the opioid  
3 prescription numbers for Giant Eagle pharmacies  
4 has gone up, down or remained constant?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: From 2006 to -- what was  
7 the final date?

8 BY MR. HUDSON:

9 Q. To present.

10 MR. KOBRIN: If you know.

11 THE WITNESS: I would say up a little  
12 and then back down.

13 BY MR. HUDSON:

14 Q. And then when you say back down, then  
15 that was the point that you made about Vicodin  
16 switching from a Schedule III to a Schedule II?

17 A. Correct.

18 Q. In your 12 years as a PDL, who did you  
19 report to?

20 A. I started reporting to Randy Heiser and  
21 then Anthony Mollica and then Greg Carlson, Mark  
22 Doerr. At present it's Michael Chappell.

23 Q. So it's five different people. Any  
24 sense of the timeframes of when those direct  
25 reports for you changed?

Page 19

1 A. No, no. I mean, Randy promoted Anthony,  
2 and they were both still with us. Instead of  
3 reporting to Anthony or instead of reporting to  
4 Randy, we would report to Anthony. You could  
5 see -- I'm sure you can get whenever Anthony left  
6 is when we started reporting to Greg. Then it  
7 just falls into place.

8 (HBC-Bencivengo Exhibits 1 - 2 were marked.)

9 BY MR. HUDSON:

10 Q. I'll mark here as Exhibit 1 a copy of an  
11 organizational chart. This is the earliest one we  
12 could find. This at least gives us one point in  
13 time. Actually, I'll go ahead and mark another  
14 one, too.

15 MR. HUDSON: So Exhibit 1 is 6016 and  
16 Exhibit 2 is 6017.

17 BY MR. HUDSON:

18 Q. These are a couple of organizational  
19 charts. It looks like in this time in November of  
20 2014 and June of 2015 you were reporting to  
21 Mr. Carlson.

22 A. That's correct.

23 Q. Does this give you any more recollection  
24 on when you maybe began reporting to Mr. Carlson?

25 A. If this is the earliest we got, then I

Page 20

1 would say 2013, 2014. It was as soon as Randy  
2 left.

3 Q. That's helpful. We can figure it out  
4 from there. So you as a PDL, you and the other  
5 PDLs then reported directly up to the  
6 vice-president of pharmacy operations?

7 A. At the time, correct.

8 Q. And does that remain true today, that  
9 your direct report is the VP of pharmacy  
10 operations?

11 A. No.

12 Q. Who do you report up to now?

13 A. Mike Chappell is the operations  
14 director.

15 Q. So now you report to the operations  
16 director?

17 A. Correct.

18 Q. Did Giant Eagle reorganize in terms of  
19 the reports?

20 A. Yes. Greg left. Yeah, they did a  
21 little bit of reorganization, just who you report  
22 to.

23 Q. Is the operations manager still part of  
24 the pharmacy department?

25 A. Yes. It's the operations director,

Page 21

1 director of operations.

2 Q. So in your role as a pharmacy district  
3 leader, describe what your responsibilities are.

4 A. It started off buying drugs. Anything  
5 that falls under operations. So whether it's  
6 involved with hiring, firing, enforcing policies,  
7 corrective actions, taking care of any quality  
8 issues and whatever else my boss would ask us to  
9 do which pertains to running a pharmacy,  
10 controlling labor, helping in buyouts.

11 Q. Is your role limited to overseeing the  
12 particular retail pharmacies in your territory?

13 A. Correct. I oversee 33 pharmacies. Like  
14 if someone is on vacation, I might cover their  
15 stores for a week just as a point person.

16 Q. Sure. But for example, you're aware  
17 that there was a warehouse, HBC warehouse in  
18 Washington, Pennsylvania?

19 A. I'm aware of it.

20 MR. KOBRIN: Object to form.

21 BY MR. HUDSON:

22 Q. And would you have any responsibilities  
23 related to that warehouse?

24 A. No.

25 Q. How did your -- how does your

<p style="text-align: right;">Page 22</p> <p>1 compensation work as a pharmacy district leader?</p> <p>2 Like do you obtain a base salary and then</p> <p>3 incentive compensation, or how does this</p> <p>4 compensation system work for PDLs?</p> <p>5 MR. KOBRIN: Object to form.</p> <p>6 THE WITNESS: It's basically just a</p> <p>7 percentage higher than the pharmacy manager.</p> <p>8 Bonus structure is if there's any bonuses based on</p> <p>9 company overall performance. I don't have any</p> <p>10 drivers for myself. I mean, there are goals, but</p> <p>11 they don't determine any part of my bonus. It's</p> <p>12 all or none. We all seven get it or we all seven</p> <p>13 don't get it.</p> <p>14 Q. When you say you all seven get it, you</p> <p>15 all seven would get a bonus if whatever the target</p> <p>16 is is met?</p> <p>17 A. Correct.</p> <p>18 Q. What is the target for PDLs?</p> <p>19 A. It's based on store Giant Eagle sales,</p> <p>20 Giant Eagle as a company, not pharmacy. We're not</p> <p>21 separate out. We're separate out as we speak</p> <p>22 today. This is the first time. But every other</p> <p>23 year has been -- if the pharmacy -- if Giant Eagle</p> <p>24 was projected to hit this target as a company and</p> <p>25 we did, then the seven people under this district</p>	<p style="text-align: right;">Page 24</p> <p>1 potentially were eligible for a bonus, the way</p> <p>2 that bonuses were determined was based off of the</p> <p>3 total performance of the company?</p> <p>4 A. Correct.</p> <p>5 Q. And then particular categories of</p> <p>6 employees that were eligible for bonuses, like you</p> <p>7 as a PDL, for example, you and the other six PDLs</p> <p>8 would all be entitled to the same percentage</p> <p>9 bonus?</p> <p>10 A. Correct.</p> <p>11 MR. KOBRIN: Object to form.</p> <p>12 BY MR. HUDSON:</p> <p>13 Q. And that was true, just to close out</p> <p>14 this topic, that was true that entire 11 years or</p> <p>15 12 years until -- 2019 is what you're saying is</p> <p>16 when now the structure is changed?</p> <p>17 A. Correct.</p> <p>18 Q. So from your individual standpoint,</p> <p>19 there was no way for you to achieve any particular</p> <p>20 bonus or incentive compensation based off of any</p> <p>21 individual performance?</p> <p>22 A. No.</p> <p>23 Q. What about raises in salary, did those</p> <p>24 differ among PDLs?</p> <p>25 A. Salaries may differ a little depending</p>
<p style="text-align: right;">Page 23</p> <p>1 leader would get the bonus.</p> <p>2 Q. Would it be those seven people or it</p> <p>3 would be everybody companywide including the PDLs</p> <p>4 and then PDLs would get a certain percentage</p> <p>5 bonus?</p> <p>6 A. Correct.</p> <p>7 Q. So the comp system, to your knowledge,</p> <p>8 between 2006 and 2018 was set up so that everyone</p> <p>9 would get a salary and then a bonus, and a bonus</p> <p>10 would be set off of a performance metric for the</p> <p>11 company as a whole. And then the only difference</p> <p>12 for any particular types of employees would be the</p> <p>13 percentage bonus that they would get?</p> <p>14 MR. KOBRIN: Object to form.</p> <p>15 THE WITNESS: The only change we made</p> <p>16 was in the past starting in 2006. Even when I was</p> <p>17 in the store, just the pharmacy manager was</p> <p>18 eligible for the bonus. We changed. The staff</p> <p>19 pharmacist and the floater pharmacist can share a</p> <p>20 piece of that, too.</p> <p>21 BY MR. HUDSON:</p> <p>22 Q. I want to make sure I understand the</p> <p>23 compensation system that existed from 2006 to</p> <p>24 2018.</p> <p>25 Am I correct though that employees who</p>	<p style="text-align: right;">Page 25</p> <p>1 on when we were hired, but the raise was always</p> <p>2 standard. If it was two percent, everyone got two</p> <p>3 percent.</p> <p>4 Q. So year to year the salaries weren't</p> <p>5 based off of performance metrics, your individual</p> <p>6 performance of sales that occurred in your</p> <p>7 territory or any individual financial metrics like</p> <p>8 that?</p> <p>9 A. You said salary. You mean salary or</p> <p>10 bonus?</p> <p>11 Q. Salary. Sorry.</p> <p>12 A. No, no.</p> <p>13 Q. And you already testified about the</p> <p>14 bonus; right?</p> <p>15 A. Correct.</p> <p>16 Q. So to your knowledge, there was no</p> <p>17 ability to get an increase in salary or any sort</p> <p>18 of incentive compensation based off of any</p> <p>19 individual performance by yourself or the</p> <p>20 pharmacies in your territories?</p> <p>21 MR. KOBRIN: Object to form.</p> <p>22 THE WITNESS: That's correct.</p> <p>23 BY MR. HUDSON:</p> <p>24 Q. Tell me, if you can recall, the first</p> <p>25 time that you heard the phrase suspicious order</p>

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1 monitoring.  
 2 A. Years. It's at least 14, 15, somewhere  
 3 around there.  
 4 Q. Back at some point when you became a  
 5 PDL?  
 6 A. Oh, for sure, yes.  
 7 Q. I guess even 14, 15 would be before  
 8 that; right? So prior to becoming a PDL, you'd  
 9 heard of the phrase suspicious order monitoring?  
 10 MR. KOBRIN: Object to form.  
 11 THE WITNESS: When I became a PDL in  
 12 2007, no, I didn't hear that before in the store.  
 13 BY MR. HUDSON:  
 14 Q. You had not heard that phrase before?  
 15 A. In the store, no.  
 16 Q. So at some point when you became a PDL,  
 17 you learned of the phrase suspicious order  
 18 monitoring?  
 19 A. Correct.  
 20 Q. And do you recall how you learned of  
 21 that phrase?  
 22 A. We attend meetings. We're copied on  
 23 emails. We attend seminars. So it's probably  
 24 either we were looking at software at a seminar or  
 25 I was with George Chunderlik.

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1 MR. KOBRIN: Don't speculate. If you  
 2 know.  
 3 THE WITNESS: That's how it is. It was  
 4 nothing formal. There's suspicious order  
 5 monitoring, and we're going to look at some  
 6 software and some things to solve it.  
 7 BY MR. HUDSON:  
 8 Q. Do you remember any more specifically  
 9 though how you came to understand -- let me take a  
 10 step back. Let me ask it this way. To you what  
 11 does the phrase suspicious order monitoring mean?  
 12 A. Looking at an order to make sure it's  
 13 not suspicious.  
 14 Q. What in your mind is a suspicious order?  
 15 A. Something maybe -- if I'm ordering 10  
 16 bottles of something a week and all of a sudden I  
 17 order 25, it's suspicious. It might not be  
 18 something bad. It's just something we have to  
 19 look at.  
 20 Q. So one example of a suspicious order  
 21 would be an order of unusual size?  
 22 A. Correct.  
 23 Q. I guess the example you gave would be  
 24 one that would be an order that deviated from the  
 25 past; right? You said it used to be they were

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1 ordering 10 and now they're ordering 25 --  
 2 MR. KOBRIN: Object to form.  
 3 BY MR. HUDSON:  
 4 Q. -- bottles. Did I understand that  
 5 right?  
 6 A. Correct.  
 7 Q. Any other orders or types of orders that  
 8 you can think of that would fall within your  
 9 understanding of suspicious orders?  
 10 A. No.  
 11 Q. Do you have any understanding of whether  
 12 manufacturers, distributors or dispensers have any  
 13 obligations under federal law to monitor orders of  
 14 controlled substances?  
 15 MR. KOBRIN: Object to form.  
 16 THE WITNESS: You have to repeat that  
 17 question.  
 18 BY MR. HUDSON:  
 19 Q. Sure. Do you have any understanding of  
 20 whether manufacturers, distributors or dispensers  
 21 have any obligations under federal law to monitor  
 22 suspicious orders of controlled substances?  
 23 A. Yes.  
 24 Q. What is your understanding?  
 25 A. It's basically what you just said, just

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1 to make sure that nothing is out of the ordinary,  
 2 make sure nothing is suspicious, make sure  
 3 everything is -- make sure what we're ordering is  
 4 what is needed.  
 5 Q. And do you have an understanding of  
 6 whether or not there's different obligations for  
 7 distributors versus dispensers?  
 8 A. I've never worked for a distributor, so  
 9 I can only speak for dispensers, but yes.  
 10 Q. Do you have any knowledge about the  
 11 obligations of the Controlled Substances Act as  
 12 they relate to distributors?  
 13 MR. KOBRIN: Object to form.  
 14 THE WITNESS: No. I've never worked for  
 15 a distributor.  
 16 BY MR. HUDSON:  
 17 Q. And I assume then you've never attended  
 18 seminars or education or training, anything like  
 19 that, that would relate to obligations of  
 20 distributors to monitor controlled substances?  
 21 MR. KOBRIN: Object to form.  
 22 BY MR. HUDSON:  
 23 Q. Suspicious orders of controlled  
 24 substances.  
 25 MR. KOBRIN: Object to form.



<p style="text-align: right;">Page 30</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MR. HUDSON:</p> <p>3 Q. How about dispensers, that would be like</p> <p>4 the retail pharmacies in your territory; right?</p> <p>5 A. Correct.</p> <p>6 Q. Have you attended any seminars or</p> <p>7 obtained any training on the obligations of retail</p> <p>8 pharmacies to monitor for suspicious orders?</p> <p>9 MR. KOBRIN: Object to form.</p> <p>10 THE WITNESS: I had some training on</p> <p>11 what the expectations are through George.</p> <p>12 BY MR. HUDSON:</p> <p>13 Q. Through George Chunderlik?</p> <p>14 A. Yeah.</p> <p>15 Q. Was that all of the PDLs or just you?</p> <p>16 A. I believe it was all the PDLs, but I'm</p> <p>17 not going to speculate on that. I know that I</p> <p>18 started receiving questions from the office. I</p> <p>19 was interested in it, so I reached out to him. He</p> <p>20 spent some time with me on it.</p> <p>21 Q. Do you have any ballpark timeframe on</p> <p>22 when you and George went over it?</p> <p>23 A. I would say last year sometime, but I</p> <p>24 don't remember.</p> <p>25 Q. How about prior to -- let's just zero in</p>	<p style="text-align: right;">Page 32</p> <p>1 would interact with besides Mr. Millward?</p> <p>2 A. Millward, Adrienne Anthony. Almost</p> <p>3 everyone on this list. It's a small group.</p> <p>4 Q. When you say everyone on that list, are</p> <p>5 you looking at Exhibit 1 or Exhibit 2?</p> <p>6 A. 1 and 2.</p> <p>7 Q. So Exhibits 1 and 2, who are you --</p> <p>8 you're looking to the left under people underneath</p> <p>9 Mr. Millward?</p> <p>10 A. Yes.</p> <p>11 Q. Adrienne Anthony, George Chunderlik?</p> <p>12 A. Lynne Kolas.</p> <p>13 Q. Lynne Kolas?</p> <p>14 A. Yep, Rick Springer. In that big box</p> <p>15 only a couple of them.</p> <p>16 Q. Which ones, which people in the big box?</p> <p>17 A. Rick Westfall.</p> <p>18 MR. KOBRIN: He's talking about people</p> <p>19 you interacted with on a daily basis.</p> <p>20 THE WITNESS: Oh, yeah, these guys are</p> <p>21 in the field.</p> <p>22 BY MR. HUDSON:</p> <p>23 Q. Mr. Millward was the head of pharmacy</p> <p>24 quality and compliance?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 31</p> <p>1 on anything prior to 2016, any conversations with</p> <p>2 anyone at Giant Eagle or seminars or training or</p> <p>3 anything else specifically focused on monitoring</p> <p>4 suspicious orders of controlled substances.</p> <p>5 MR. KOBRIN: Object to form. Are you</p> <p>6 talking about from a store to a distribution or</p> <p>7 are you talking generally?</p> <p>8 MR. HUDSON: In general.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. HUDSON:</p> <p>11 Q. How much interaction would you say that</p> <p>12 you had with Mr. Chunderlik or Mr. Millward or</p> <p>13 anyone else from their team between 2009 and 2016?</p> <p>14 A. We interact almost daily, especially</p> <p>15 when Millward was here.</p> <p>16 Q. You interacted with -- who would you say</p> <p>17 you interacted with daily?</p> <p>18 A. Probably Joe Millward.</p> <p>19 MR. KOBRIN: Are you talking about for</p> <p>20 the entire period of time?</p> <p>21 THE WITNESS: He has some different</p> <p>22 roles, too.</p> <p>23 BY MR. HUDSON:</p> <p>24 Q. We'll get into that. Who else would you</p> <p>25 say during that 2009 to 2016 timeframe that you</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And so what is your understanding of his</p> <p>2 role for pharmacy quality?</p> <p>3 A. That's why when you said who did you</p> <p>4 interact with the most, I interacted with him</p> <p>5 mostly on quality, following up on incidents,</p> <p>6 whether things are errors or not, pharmacists in</p> <p>7 trouble with errors, trying to correct that kind</p> <p>8 of stuff. So my interactions were more with him</p> <p>9 on the quality side and less on the compliance</p> <p>10 side.</p> <p>11 Q. How about Mr. Chunderlik, did you have</p> <p>12 regular communications with him, or did you</p> <p>13 usually work through Mr. Millward?</p> <p>14 A. I'd usually work through Mr. Millward.</p> <p>15 Q. Tell me, if you could, the types of</p> <p>16 quality issues that you would work through with</p> <p>17 Mr. Millward or others in his group.</p> <p>18 MR. KOBRIN: Object to form.</p> <p>19 THE WITNESS: Any time an error is made</p> <p>20 in the pharmacy, there's a procedure we go</p> <p>21 through. You follow up on every single one of</p> <p>22 them. So in his role in that time period, we</p> <p>23 would follow up with him. Here's what happened.</p> <p>24 Here's my action plan. And we'd work the plan,</p> <p>25 and there would be an outcome out of it.</p>

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1 BY MR. HUDSON:  
 2 Q. When you say work the plan, you mean  
 3 some sort of action items are put in place to  
 4 solve whatever the problem was that led you to  
 5 reach out to him?  
 6 A. Correct.  
 7 Q. Can you think of some examples of errors  
 8 or problems that would come up from time to time  
 9 in pharmacies?  
 10 MR. KOBRIN: Object to form.  
 11 THE WITNESS: Wrong drugs, wrong  
 12 directions, wrong patient label. The list goes on  
 13 and on. We -- I won't use the word expect, but  
 14 those things happen. You try to minimize them.  
 15 But if you have someone kind of out of that bell  
 16 curve, that's when this group gets involved. So  
 17 we can either help them. Are they at the wrong  
 18 store? Are they in the wrong position?  
 19 We go through painstaking steps to keep them,  
 20 but sometimes unfortunately the decision is made  
 21 to let them go.  
 22 BY MR. HUDSON:  
 23 Q. How about on the compliance side, what  
 24 would be examples of compliance issues that you  
 25 would reach out to Mr. Millward or his team about?

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1 MR. KOBRIN: Object to form.  
 2 THE WITNESS: We have to do monthly  
 3 audits of our narcotics, CII's. Again, monthly, so  
 4 if I look at those and something is missing, if  
 5 they expect to have 630 in the tablet and there's  
 6 540, we need to investigate that and find out. So  
 7 that's when George and Joe and the state board and  
 8 the DEA get involved. We either find it --  
 9 sometimes we don't find it. But the second we're  
 10 notified via email, we start the process.  
 11 BY MR. HUDSON:  
 12 Q. How are you notified about the results  
 13 of the monthly audits?  
 14 A. They're emailed to me.  
 15 Q. Other than monthly audits, are there any  
 16 other compliance issues you can think of that  
 17 existed in the 2009 to 2016 timeframe where you  
 18 would interact with Mr. Millward or his group?  
 19 A. If something was off. We have strengths  
 20 in place. Perpetual inventory, if that was off.  
 21 If we were getting a delivery and there's supposed  
 22 to be ten bottles of Vicodin and there's only nine  
 23 and the pharmacist signed for it, got to get  
 24 involved. So any sort of issue with drug coming  
 25 in and drug going out.

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1 Q. So if inventory counts were wrong?  
 2 A. Exactly.  
 3 Q. Then that would be an example of where  
 4 you would get them involved.  
 5 Any other compliance issues you can think of  
 6 where you were interacting with Mr. Millward or  
 7 his group?  
 8 A. Compliance issues, I mean, I guess  
 9 compliance is such a big umbrella. If a customer  
 10 would come in and we would deem the prescription  
 11 wasn't valid and we weren't going to fill it, we  
 12 just wanted to make sure everyone knew about it  
 13 and these are the reasons why and we're going to  
 14 send them away.  
 15 Q. Would you reach out to Mr. Millward or  
 16 someone in his group each time a pharmacy would  
 17 decide not to fill a prescription, or how would  
 18 there be -- how would the decision be made as to  
 19 whether or not to contact them or not?  
 20 MR. KOBRIN: Object to form. Who is  
 21 "them"?  
 22 MR. HUDSON: Mr. Millward or his group.  
 23 THE WITNESS: Only if there was a  
 24 situation where the customer would come back and  
 25 say, I'm going to sue you, or there was any kind

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1 of threat made. The majority of the time, I think  
 2 these people know if you're giving it back to  
 3 them. They're out the door.  
 4 Q. Did any of the pharmacies in your  
 5 territory ever keep logs of prescriptions that  
 6 were attempted to be filled or not filled by the  
 7 pharmacists?  
 8 MR. KOBRIN: Object to form.  
 9 THE WITNESS: No.  
 10 BY MR. HUDSON:  
 11 Q. As you sit here today, do you have any  
 12 sense of how many times pharmacists in your  
 13 territory would decide not to fill a prescription?  
 14 MR. KOBRIN: During the entire time?  
 15 MR. HUDSON: Yeah, between 2009 and  
 16 2016.  
 17 MR. KOBRIN: If you can give an answer.  
 18 THE WITNESS: I can't speculate. I can  
 19 tell you a hundred percent it happens.  
 20 BY MR. HUDSON:  
 21 Q. Did any pharmacist in your territory  
 22 between 2009 and 2016 ever bring to your attention  
 23 any concerns about patients or prescribers or pain  
 24 clinics where patients were coming and trying to  
 25 fill prescriptions and the pharmacist felt like

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1 they may not be valid or they'd be at risk of  
2 diversion?  
3 MR. KOBRIN: Object to form.  
4 THE WITNESS: Yes.  
5 BY MR. HUDSON:  
6 Q. How many times would you say that  
7 happened?  
8 A. Again, with the new law being capped, I  
9 couldn't even speculate. I know that it happens.  
10 Q. Do you remember any of the details  
11 around any times where pharmacists ever raised  
12 concerns with you?  
13 A. The majority of the time, if the doctor  
14 has a bad name in the area. So they wanted to  
15 know if they could not fill any prescriptions from  
16 Dr. Bencivengo. We don't -- we support them a  
17 hundred percent on their decision to fill or not  
18 fill, but we don't support just blankly saying  
19 we're not filling any prescriptions from a doctor.  
20 We have a process in place. You do your due  
21 diligence. You make a decision that way. If part  
22 of the due diligence says this guy doesn't need a  
23 script, he's a bad doctor, then send them on the  
24 way. We don't have any list of doctors that we  
25 don't fill for.

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1 Q. In your territory in Ohio, from time to  
2 time were there doctors identified by pharmacists  
3 that they believe to be bad doctors?  
4 A. Yes.  
5 Q. Did you or anyone else at Giant Eagle  
6 keep a log or a record of bad doctors in Ohio that  
7 a prescription being written by them at least  
8 raised a red flag of concern?  
9 A. Again, no official log. I've walked  
10 into many stores and saw something hand scribbled  
11 on a bulletin board, be careful of these three  
12 doctors; not do not fill, just but be careful.  
13 Q. Was that more of an individual store to  
14 individual store?  
15 A. An FYI. If I'm coming in as a floater  
16 that day, this is what I should look for.  
17 Q. Was there any sort of log or -- I'm  
18 trying to think of a good -- report, any way that  
19 Giant Eagle is memorializing diversion risks at  
20 the pharmacy level in terms of bad doctors or  
21 anything else that would cause there to be a  
22 concern about the diversion of controlled  
23 substances?  
24 MR. KOBRIN: Object to form. What do  
25 you mean by bad doctors?

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1 BY MR. HUDSON:  
2 Q. Well, you used the phrase bad doctors;  
3 right?  
4 A. Correct.  
5 Q. Bad doctor in your mind means a doctor  
6 that's at risk for writing a prescription that is  
7 not for medically valid purposes; right?  
8 A. Right. We're not going to put -- the  
9 only time we take a doctor out of our database  
10 system is once his license has been taken away.  
11 The process doesn't change no matter who the  
12 doctor is because, because he's a bad doctor, two  
13 people still might need something he's writing.  
14 So we're still going to do the exact same  
15 steps every single time. We're going to call.  
16 We're going to get the diagnosis. We're going to  
17 get how many times he's been on it, what are the  
18 other treatment options. We're going to run the  
19 OARRS report.  
20 Q. If you could, and I do this all the  
21 time --  
22 A. I'm talking fast?  
23 Q. Yeah.  
24 A. We don't keep a list. There's no list  
25 of bad doctors. That's not how we keep the drugs

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1 off the street.  
2 Q. Was there any report or log though or  
3 repository, anything where any information or data  
4 was kept about doctors or concerns about risk of  
5 diversion?  
6 MR. KOBRIN: Object to form.  
7 THE WITNESS: Nothing on doctors, no.  
8 BY MR. HUDSON:  
9 Q. What about pain clinics or institutions  
10 or any particular prescribing organizations that  
11 were a concern?  
12 A. I'll give you the same answer every  
13 time. We don't paint with a broad brush. If a  
14 pharmacist would call me and say, I have a concern  
15 about this clinic, my response is, call the Ohio  
16 state Board, have the Board agent come down. They  
17 can investigate it and they can get back to us on  
18 what we should do.  
19 And then we'll look at each script  
20 individually and go through the same steps we do  
21 every single time.  
22 Q. What are those steps that you go through  
23 every single time?  
24 A. So you drop off a prescription. Are you  
25 a new customer? Do I know you? If you've been

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1 coming to me for ten years and I know your  
 2 diagnosis, you're in stage IV cancer, I'm going to  
 3 fill your script. You're not getting a hard time.  
 4 If you're a new customer and you're 25 miles  
 5 away and you're going to that suspicious doctor  
 6 and it's 8:50 at night, we're probably not going  
 7 to fill it. We're probably going to call the  
 8 doctor in the morning. We're probably going to  
 9 run the OARRS report, which is required because  
 10 you're a new customer and a new patient, I mean, a  
 11 new prescription. We're going to get some  
 12 information.  
 13 After that information is gathered, if we  
 14 still deem that it's legit to the best of our  
 15 knowledge, we'll fill it. If we don't feel it is,  
 16 then we won't fill it.  
 17 Q. And is there any criteria that  
 18 pharmacists apply across Giant Eagle, or instead  
 19 is it just the individual judgment of each  
 20 pharmacist at each pharmacy?  
 21 MR. KOBRIN: Object to form.  
 22 THE WITNESS: I'm sure you've heard the  
 23 red flags, what we're using. They sign off on a  
 24 CBT that they've read that and understand it.  
 25 That's part of the -- that's one weapon in the bag

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1 along with the OARRS report. The person standing  
 2 in front of you is another.  
 3 BY MR. HUDSON:  
 4 Q. You're ahead of me now. I don't  
 5 actually understand. You used a phrase, not the  
 6 OARRS report, but you said something else that  
 7 would generate red flags. You made reference to  
 8 some report or some -- CDT.  
 9 A. The red flags report. You said do we  
 10 use standard -- is there a standard across the  
 11 chain.  
 12 Q. Right.  
 13 A. All our pharmacists are taught about the  
 14 red flags, what to look for.  
 15 Q. I guess what does CBT stand for?  
 16 A. Computer-based training.  
 17 Q. I'm trying to catch up, but I'm behind.  
 18 Tell me, what is computer-based training?  
 19 A. It's a vehicle that Giant Eagle uses for  
 20 training. So everyone has to do the OSHA once a  
 21 year. Everyone has to do fraud, waste and abuse.  
 22 So the way to track it is you go on the computer.  
 23 You sign in. You watch the video. You answer the  
 24 questions. You acknowledge at the end that you  
 25 saw it or read it, and you're good for the year.

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1 On the flip side, if something would happen,  
 2 someone can't hide behind "I don't know what  
 3 you're talking about," because I pull up the date  
 4 and say, well, on May 5 you watched this video.  
 5 Q. Tell me, if you could, what are the  
 6 topics or what issues are covered in CBT.  
 7 MR. KOBRIN: Object to form.  
 8 THE WITNESS: It could be anything that  
 9 Giant Eagle or anything that the pharmacy wants to  
 10 get across, any training.  
 11 BY MR. HUDSON:  
 12 Q. So it's a proprietary, I guess, software  
 13 program or training video put together by a group  
 14 of people at Giant Eagle?  
 15 A. Correct.  
 16 Q. Who makes the decision about what  
 17 content to include in the CBT from year to year?  
 18 MR. KOBRIN: Object to form. If you  
 19 know.  
 20 THE WITNESS: The compliance stuff would  
 21 be George.  
 22 BY MR. HUDSON:  
 23 Q. And then would it have been Joe Millward  
 24 before George?  
 25 A. They were both in the role. So it would

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1 have been one of the two.  
 2 Q. And then who decides though overall what  
 3 the CBT video for that year looks like? Is there  
 4 somebody who ultimately makes the decision, or is  
 5 it just a compilation of a group of different  
 6 people coming together?  
 7 MR. KOBRIN: Object to form.  
 8 THE WITNESS: I have no idea. I'm not  
 9 part of that.  
 10 BY MR. HUDSON:  
 11 Q. Do you know whether Mr. Millward or  
 12 Mr. Chunderlik contributed any compliance material  
 13 to any of the CBTs over the years?  
 14 A. Not to my knowledge. I would assume in  
 15 their roles, but I don't know.  
 16 Q. Would you have to take the CBT each  
 17 year?  
 18 A. Yes.  
 19 Q. Do you have any recollection of there  
 20 being any compliance content on any of the CBTs  
 21 that you took over the years?  
 22 A. There was compliance content in there,  
 23 yeah. I don't know where it came from. It didn't  
 24 say this is from Joe or this is from George. It's  
 25 just compliance.



<p style="text-align: right;">Page 46</p> <p>1 Q. Sure. And I guess I was more in  2 general trying to figure out how much compliance  3 material as a whole was included in the CBTs.  4 A. At minimum, at bare minimum you're going  5 to see fraud, waste and abuse, make sure we're  6 compliant to that.  7 Q. Do you have any recollection of there  8 being any content relating to suspicious order  9 monitoring?  10 A. No.  11 Q. Do you know whether or not the  12 compliance group had any responsibilities for  13 investigating any suspicious orders of controlled  14 substances?  15 MR. KOBRIN: Object to form.  16 THE WITNESS: I'm not in that group.  17 BY MR. HUDSON:  18 Q. And I guess just to make sure -- and I  19 apologize. Sometimes I ask you questions that I  20 just got to ask so I get a clear record.  21 As far as your role as a pharmacy district  22 leader, did you ever learn in that role by  23 interacting with the compliance group that there  24 was any obligation of the compliance group to  25 investigate any orders that had been flagged as</p>	<p style="text-align: right;">Page 48</p> <p>1 or order of controlled substance that they had  2 flagged as being potentially suspicious or  3 concerning?  4 MR. KOBRIN: Object to form.  5 THE WITNESS: I can't give you an exact  6 number, but, yes, both of them were contacted via  7 email or via phone call.  8 BY MR. HUDSON:  9 Q. Do you have any sense, as you sit here  10 today, how many times that happened? In other  11 words, was it two or three times or 50 times or  12 500 times?  13 MR. KOBRIN: What time period are we  14 talking about?  15 MR. HUDSON: Between 2009 and 2016.  16 THE WITNESS: I can't even guess. I  17 mean, that's so long ago. It happened. I can  18 tell you that.  19 BY MR. HUDSON:  20 Q. Can you think of the specifics of any  21 shipments or orders to any particular stores  22 within Ohio where Mr. Millward or Mr. Chunderlik  23 was asking you questions about the store, the  24 pharmacist or anything that had caused a red flag  25 to raise in terms of being concerned about</p>
<p style="text-align: right;">Page 47</p> <p>1 being suspicious orders of controlled substances?  2 MR. KOBRIN: Object to form.  3 THE WITNESS: I mean, I didn't learn  4 from them, but again them being in the compliance  5 group, talking about any kind of suspicious  6 ordering with them, one would assume that that's  7 part of their job. But I'm not going to say it as  8 a fact because I don't know.  9 BY MR. HUDSON:  10 Q. That's what I'm trying to get at, is do  11 you have any understanding. Over the years in  12 your role as a PDL, did you come to learn at all  13 what the compliance group's obligations were --  14 A. No.  15 MR. KOBRIN: Let him finish his  16 question.  17 BY MR. HUDSON:  18 Q. -- as it related to monitoring  19 suspicious orders of controlled substances?  20 MR. KOBRIN: Object to form.  21 THE WITNESS: No.  22 BY MR. HUDSON:  23 Q. Do you have any recollections of how  24 many times you were contacted by Mr. Millward or  25 Mr. Chunderlik asking about any specific shipment</p>	<p style="text-align: right;">Page 49</p> <p>1 diversion?  2 MR. KOBRIN: Object to form.  3 THE WITNESS: In those time periods  4 you're talking?  5 BY MR. HUDSON:  6 Q. Yes.  7 A. Nothing comes up in those time periods.  8 Q. And when you say those time periods, you  9 mean 2009 to 2016?  10 A. Yes.  11 Q. Have issues come up more recently?  12 A. I wouldn't say more recently. Because  13 we're talking a closer period of time, more come  14 to my mind that I can think of.  15 Q. Sure. That's what I'm trying to get at.  16 A. It's two. So it's not like it's a big  17 number.  18 Q. You can think of two times --  19 A. Yes.  20 Q. -- in 2017 or 2018 where you had  21 discussions with Mr. Chunderlik or others in the  22 compliance group about particular orders had been  23 flagged as being suspicious?  24 A. Correct.  25 MR. KOBRIN: Object to form. You're</p>



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1 using the term suspicious orders and flagged  
 2 orders concurrently or interchangeably.  
 3 MR. HUDSON: Because they are.  
 4 MR. KOBRIN: I don't think they are to  
 5 the witness. I think you're causing confusion  
 6 with him regarding flagged and suspicious orders.  
 7 THE WITNESS: Okay. That makes sense.  
 8 MR. HUDSON: I'll let you clear that up.  
 9 MR. KOBRIN: Well, I'm flagging that  
 10 issue for you.  
 11 Should we take a break?  
 12 MR. HUDSON: Yeah, that's fine. Take a  
 13 quick break.  
 14 THE VIDEOGRAPHER: We are going off the  
 15 record. The time is 3:11 p.m.  
 16 (Recess from 3:11 p.m. to 3:42 p.m.)  
 17 THE VIDEOGRAPHER: We're going back on  
 18 the record. The time is 3:42 p.m.  
 19 BY MR. HUDSON:  
 20 Q. Welcome back, Mr. Bencivengo. Before  
 21 the break, we were talking about pharmacists and  
 22 potential red flags for diversion, and you had  
 23 made reference to OARRS reports and CBTs, and that  
 24 kind of took us down this road.  
 25 So I want to go back to my original question

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1 which was: For Giant Eagle pharmacists, was there  
 2 any sort of uniform criteria that existed to apply  
 3 to try to determine whether to fill a prescription  
 4 or not?  
 5 MR. KOBRIN: Object to form.  
 6 THE WITNESS: We have document control  
 7 dispensing. In that document it lists the red  
 8 flags, what to look for to do the due diligence  
 9 and to make that decision.  
 10 BY MR. HUDSON:  
 11 Q. As you sit here today, do you have a  
 12 recollection of what those red flags are?  
 13 MR. KOBRIN: Object to form. Do you  
 14 want to show him the document?  
 15 MR. HUDSON: I don't have it.  
 16 THE WITNESS: I mean, I can't name every  
 17 single one of them, but obviously the age, the  
 18 distance, the distance they drive, the distance  
 19 from the doctor to the pharmacy and the distance  
 20 where they live and to the pharmacy. If they  
 21 mention the drugs by the street names, Percs,  
 22 Vics. Any kind of combination product, the  
 23 trinities, the pain reliever, the muscle relaxer,  
 24 those are usually a sign that calls might need to  
 25 be made.

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1 BY MR. HUDSON:  
 2 Q. And in Ohio in your 12 years there, in  
 3 your experience, were there patients coming into  
 4 pharmacies that were trying to get drugs that  
 5 weren't for medically necessary purposes?  
 6 MR. KOBRIN: Object to form.  
 7 THE WITNESS: Yes.  
 8 BY MR. HUDSON:  
 9 Q. And how did you come to that opinion?  
 10 A. As a practicing pharmacist or as a  
 11 person in my role right now?  
 12 Q. Yeah, just as a whole, in other words,  
 13 really through those 12 years in your role as a  
 14 PDL.  
 15 A. By doing the due diligence we needed to  
 16 do to fill those prescriptions, by viewing the red  
 17 flags, and then once it was determined, that's  
 18 when it was determined this wasn't necessary.  
 19 Q. Did you have enough interaction with  
 20 pharmacists and just the communities of Ohio to  
 21 get a sense of whether or not opioid diversion or  
 22 opioid abuse was a problem in the communities  
 23 where your territory existed?  
 24 MR. KOBRIN: Object to form.  
 25 THE WITNESS: Enough with the

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1 pharmacies, not in the communities. I know the  
 2 communities we serve really well. I've been doing  
 3 this for a while.  
 4 BY MR. HUDSON:  
 5 Q. Sure. That's what I guess I'm asking,  
 6 is: Do you get a sense from the pharmacies that  
 7 you served and just the communities as you got to  
 8 know them that those communities in your territory  
 9 were at higher risk for potential diversion of  
 10 opioids and opioid abuse?  
 11 MR. KOBRIN: Higher risk than what?  
 12 Object to form.  
 13 THE WITNESS: I'm not sure what you're  
 14 asking. Every community has a risk of -- it  
 15 doesn't -- it can be wealthy. It can be poor.  
 16 There's no area that would stand out more. I'm  
 17 not really sure what you're asking.  
 18 BY MR. HUDSON:  
 19 Q. I'm asking you in your experience as a  
 20 PDL, have you come to get a sense of whether  
 21 certain communities are more at risk than other  
 22 communities for opioid diversion or opioid abuse?  
 23 A. No.  
 24 Q. During your time as a PDL, did you get a  
 25 sense of whether the communities in Ohio were --

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1 the communities in Ohio in your territories had  
 2 risk for opioid diversion?  
 3 MR. KOBRIN: Object to form. Asked and  
 4 answered.  
 5 THE WITNESS: Again, all the communities  
 6 in my territory have that risk. There's affluent  
 7 areas and there's poor areas. It happens in every  
 8 community.  
 9 BY MR. HUDSON:  
 10 Q. Could you tell the difference though  
 11 between Pennsylvania, for example, when you  
 12 covered that territory and Ohio?  
 13 A. No.  
 14 Q. No difference?  
 15 A. No difference, no.  
 16 Q. Do you have any other territories or  
 17 areas of the country that you've ever worked with  
 18 pharmacies to have any other sense beyond Ohio and  
 19 Pennsylvania?  
 20 MR. KOBRIN: Object to form.  
 21 THE WITNESS: No.  
 22 BY MR. HUDSON:  
 23 Q. Did you over time get a sense of whether  
 24 or not there's an opioid crisis in our country?  
 25 MR. KOBRIN: Object to form.

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1 THE WITNESS: Yes.  
 2 BY MR. HUDSON:  
 3 Q. And what was your view?  
 4 A. My view of the crisis or how -- my view  
 5 is you can't turn on the TV or open Facebook.  
 6 It's everywhere.  
 7 Q. That's what I was asking. Do you agree  
 8 with the idea that there is an opioid crisis in  
 9 our country?  
 10 MR. KOBRIN: Object to form.  
 11 THE WITNESS: Based on the sensation of  
 12 the media, yeah, there's definitely something.  
 13 BY MR. HUDSON:  
 14 Q. Well, that's what I guess I'm trying to  
 15 get at. You've got boots on the ground in a  
 16 territory in Ohio that you've covered, and in that  
 17 you've covered those communities and the  
 18 pharmacies in those communities; right?  
 19 A. Right.  
 20 Q. So what I'm trying to get a sense of is  
 21 your firsthand knowledge in those communities, is  
 22 that consistent with the way the opioid crisis has  
 23 been discussed or portrayed in the media?  
 24 MR. KOBRIN: Object to form.  
 25 THE WITNESS: I don't compare that. I

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1 don't really work in the communities and the  
 2 stores. I'm not a practicing pharmacist in a  
 3 community, so I don't know what -- I know some  
 4 docs. I know some areas, but I don't work in the  
 5 community.  
 6 BY MR. HUDSON:  
 7 Q. Sure. And I guess what I'm trying to  
 8 get a sense of is you've at least got roughly 30  
 9 pharmacists who are in different stores in Ohio  
 10 who are reporting up to you. And when they've got  
 11 problems, then you've got problems; right?  
 12 A. Yes.  
 13 Q. So what I'm trying to get a sense of is  
 14 in your 12 years covering those territories, one  
 15 of the problems that you were dealing with was  
 16 concerns over opioid diversion.  
 17 A. Yeah. Again, I've dealt with them in  
 18 the poor stores we have. I've dealt with them in  
 19 our richest stores we have. There's no division  
 20 line. It's going to happen. I know where you're  
 21 going. Everyone knows West Virginia. There's  
 22 areas where obviously it's happening more. I  
 23 don't have stores in West Virginia.  
 24 Q. Right that's what, I guess, I'm getting  
 25 a sense of. Do you feel like that same sort of

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1 saturation or concern that was in West Virginia  
 2 was also in Ohio?  
 3 A. No.  
 4 Q. Guarding against opioid diversion, would  
 5 you say in your role as a PDL that was something  
 6 that you would spend a lot of your time on, a  
 7 minority of your time on?  
 8 A. I would say somewhere in between. Part  
 9 of being a pharmacist -- I don't need to spend a  
 10 lot of time on it because that process happens in  
 11 our stores every single day. That's part of  
 12 dispensing a prescription. It doesn't matter if  
 13 you're in West Virginia or if you're in  
 14 California. You have the same responsibilities  
 15 dispensing a prescription every single time.  
 16 So I don't have to spend a lot of time on it  
 17 because I'm hiring people and paying people to do  
 18 their job, and part of their job is doing what you  
 19 just said.  
 20 Q. Is there any way -- I've asked you  
 21 certain questions -- as we sit here today to be  
 22 able to monitor or track or gauge whether or not  
 23 the efforts at the pharmacy to guard against  
 24 diversion actually prevented the diversion of  
 25 opioids?

<p style="text-align: right;">Page 58</p> <p>1 MR. KOBRIN: Object to form.</p> <p>2 THE WITNESS: Rephrase that.</p> <p>3 BY MR. HUDSON:</p> <p>4 Q. I'm trying to get a sense of whether</p> <p>5 there's any criteria or data, any sort of metrics</p> <p>6 we could look at to try to figure out whether</p> <p>7 Giant Eagle's efforts to prevent opioid diversion</p> <p>8 actually were effective.</p> <p>9 MR. KOBRIN: Object to form.</p> <p>10 THE WITNESS: I wouldn't have any access</p> <p>11 to those records. I don't know if they exist. I</p> <p>12 could just say that we've prevented prescriptions</p> <p>13 from being filled based on the stuff we spoke</p> <p>14 about already.</p> <p>15 BY MR. HUDSON:</p> <p>16 Q. Right. But in terms of the number of</p> <p>17 prescriptions or how many or any of those specific</p> <p>18 circumstances, this is not something that's</p> <p>19 tracked by Giant Eagle?</p> <p>20 MR. KOBRIN: Object to form.</p> <p>21 THE WITNESS: To my knowledge. I don't</p> <p>22 do that tracking, no.</p> <p>23 BY MR. HUDSON:</p> <p>24 Q. And again, just to close out this topic</p> <p>25 on pharmacists who are making the decision whether</p>	<p style="text-align: right;">Page 60</p> <p>1 OARRS reports, never on anything and they're</p> <p>2 starting off with the highest dose of Oxycontin</p> <p>3 there is. A phone call should probably be made.</p> <p>4 What are we treating here? What's the diagnosis?</p> <p>5 Let's get some documentation. That's the big</p> <p>6 ones.</p> <p>7 MR. KOBRIN: Are you asking him to try</p> <p>8 and remember what's in the controlled substances</p> <p>9 manual, or are you asking him what his red flags</p> <p>10 are?</p> <p>11 BY MR. HUDSON:</p> <p>12 Q. My original question -- we've sort of</p> <p>13 gone down a windy road. My original question was:</p> <p>14 Is there a set of uniform criteria that</p> <p>15 pharmacists apply? Then I think you've made</p> <p>16 reference to a manual.</p> <p>17 A. A dispensing document. We have that</p> <p>18 document. If we had it, we could look at it.</p> <p>19 Q. I don't have it. I'm sure your counsel</p> <p>20 probably has a copy he'll use with you.</p> <p>21 Let's switch topics and talk about the</p> <p>22 relationship between the retail pharmacies and</p> <p>23 McKesson or Anda who are the Schedule II</p> <p>24 distributors into those Giant Eagle pharmacies;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 59</p> <p>1 or not to fill prescriptions, you talked about</p> <p>2 age, distance from the doctor to the pharmacy, and</p> <p>3 then from the patient to the pharmacy, I believe.</p> <p>4 A. Correct.</p> <p>5 Q. Mentioning drugs by their street name.</p> <p>6 Anything else you can think of that's in that</p> <p>7 manual on looking for red flags?</p> <p>8 MR. KOBRIN: Object to form.</p> <p>9 Misrepresents his testimony. I think he included</p> <p>10 some others during his listing.</p> <p>11 THE WITNESS: One item you didn't list I</p> <p>12 thought was if someone comes in and says, do you</p> <p>13 have a specific manufacturer. That's usually a</p> <p>14 flag because they want to sell on the street. So</p> <p>15 if they're asking for a specific manufacturer,</p> <p>16 that's always a flag, too.</p> <p>17 BY MR. HUDSON:</p> <p>18 Q. And I think you mentioned -- another one</p> <p>19 you mentioned, I believe, was combination</p> <p>20 products, if they were asking for certain</p> <p>21 combination products. Anything else you can think</p> <p>22 of, as you sit here, that would be red flags for</p> <p>23 potentially not filling a prescription?</p> <p>24 MR. KOBRIN: Object to form.</p> <p>25 THE WITNESS: First time patient, run</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Correct.</p> <p>2 Q. Did you at some point in time as a PDL</p> <p>3 learn that McKesson or Anda had set thresholds for</p> <p>4 the number of controlled substances that could be</p> <p>5 shipped to particular retail pharmacies in a given</p> <p>6 month?</p> <p>7 MR. KOBRIN: Object to form.</p> <p>8 THE WITNESS: Only, yes, if something</p> <p>9 was questioned or if I received an email on a</p> <p>10 threshold.</p> <p>11 BY MR. HUDSON:</p> <p>12 Q. If you could, just unpackage what that</p> <p>13 means.</p> <p>14 MR. KOBRIN: Object to form.</p> <p>15 THE WITNESS: From my understanding,</p> <p>16 like I said, I just want to make sure everyone</p> <p>17 understands here that I don't have an office. I'm</p> <p>18 in the field. So anything that is being done at</p> <p>19 the office, I don't know where they're pulling it</p> <p>20 from. It's handed to me and, said here's an order</p> <p>21 or here's something we're looking at.</p> <p>22 So to your point, the threshold, I'm not sure</p> <p>23 if it was McKesson who said it. I just got an</p> <p>24 email that said store A is approaching a</p> <p>25 threshold. What do you think? We had five or six</p>

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1 different questions, five or six starting  
2 questions, and then anything else we could add to  
3 decide if we should increase that threshold or  
4 not.  
5 BY MR. HUDSON:  
6 Q. And did you have any regular practice  
7 that you followed in trying to figure out whether  
8 or not to take steps to try to get the threshold  
9 for that store raised?  
10 A. Yes. That's what I just alluded to.  
11 There was five or six questions we would call and  
12 ask the store, did a new practice open up, did we  
13 buy a pharmacy, did a pharmacy close, do we have  
14 any other -- am I missing something. Why is  
15 business increasing here? Do you need this? Or  
16 the threshold is high. It's the 30th of the month  
17 and tomorrow it resets. We are not going to reset  
18 it. They're not always reset.  
19 Q. Can you remember specific instances  
20 where Giant Eagle did not reset thresholds and  
21 just stopped?  
22 A. Yes.  
23 Q. How many times would you say stores in  
24 your territory had thresholds applied and there  
25 was just a determination made not to raise those

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1 thresholds?  
2 MR. KOBRIN: Object to form. Are we  
3 talking about McKesson now or HBC thresholds?  
4 MR. HUDSON: We're talking about any  
5 thresholds of stores in his territory. So  
6 thresholds that apply to his pharmacies.  
7 THE WITNESS: Again, we're going back.  
8 I didn't log the times I did it, but I can say  
9 that it happened. It happened for sure. Five  
10 times, six times? It happened.  
11 BY MR. HUDSON:  
12 Q. That's all I'm trying to get a sense of.  
13 Between 2009 until the present, just how many  
14 times you can think of where there were thresholds  
15 for controlled substances that were being applied  
16 either by McKesson, HBC or any other  
17 distributor --  
18 A. I would probably say at least --  
19 MR. KOBRIN: Wait. Let him finish. I'm  
20 not sure what the question is.  
21 BY MR. HUDSON:  
22 Q. -- and Giant Eagle made the decision to  
23 keep those thresholds in place and not take steps  
24 to try to raise them?  
25 MR. KOBRIN: You've been saying reset in

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1 your other questions. I think we're getting a  
2 little confused here.  
3 MR. HUDSON: Just say "Objection.  
4 Form." If he understands it -- he can ask  
5 clarifying questions.  
6 MR. KOBRIN: I'm asking you. You don't  
7 have to answer my question. I'm asking you  
8 straight up.  
9 BY MR. HUDSON:  
10 Q. Did you understand the question?  
11 A. You got to repeat it.  
12 Q. In your role as a pharmacy district  
13 leader, and I'm focused on between 2009 and the  
14 present, are there specific times where McKesson  
15 or Anda or HBC, some distributor, had a threshold  
16 that was in place and then you at the retail  
17 pharmacy level, you or others in your territory  
18 made the decision to maintain that threshold and  
19 not try to take steps to get that threshold  
20 increased?  
21 MR. KOBRIN: Object to form.  
22 THE WITNESS: Yes. That happened.  
23 BY MR. HUDSON:  
24 Q. And do you have a sense from 2009 to  
25 2016, that seven-year time period, how many times

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1 there was a threshold that was applied that  
2 resulted in a particular store not being able to  
3 continue to order controlled substances?  
4 MR. KOBRIN: Object to form.  
5 THE WITNESS: I want to say a minimum of  
6 ten times. I know the way I did it was if you  
7 were getting towards the end of the month, there  
8 was really no good reason for me to increase it or  
9 to recommend -- I didn't have the power to  
10 increase it, but to recommend to increase it. We  
11 would just hold off. If it was a day or two, we  
12 definitely wouldn't reset that.  
13 BY MR. HUDSON:  
14 Q. During that nine-year time period, you  
15 can remember ten instances or so when you made the  
16 decision not to increase the threshold for a  
17 particular store?  
18 MR. KOBRIN: Object to form. He said  
19 that he didn't make any decisions about increasing  
20 a threshold already.  
21 THE WITNESS: Recommendations.  
22 BY MR. HUDSON:  
23 Q. That you made the recommendation to  
24 increase the threshold?  
25 A. To not increase the threshold; right.



<p style="text-align: right;">Page 66</p> <p>1 Q. Excuse me. Let's just make sure my  2 question is clear. So you can remember ten  3 instances or so where there was a specific  4 threshold that was being imposed on a store, and  5 you made the decision not to recommend to -- not  6 to recommend that that threshold be increased?  7 A. Correct.  8 Q. Do you have any sense of how many times  9 Giant Eagle stores were bumping up against  10 thresholds in that nine-year period, stores in  11 your territory?  12 MR. KOBRIN: Object to form. Asked and  13 answered.  14 THE WITNESS: No, I don't.  15 BY MR. HUDSON:  16 Q. Is there anywhere we could go to see  17 documentation that would tell us whether a  18 particular store in a particular month was bumping  19 up against a threshold?  20 A. Yeah. Probably somebody at the office  21 could give that you information.  22 Q. That's what I'm trying to figure out.  23 Is there some sort of form or comparison that we  24 could do to figure that out to your knowledge?  25 A. You might check with the office. I</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. HUDSON:  2 Q. How about to you as a pharmacy district  3 leader?  4 MS. MONAGHAN: Object to form.  5 MR. KOBRIN: Object to form.  6 THE WITNESS: Nope, not -- no.  7 BY MR. HUDSON:  8 Q. Did you or anyone on your team ever take  9 steps to try to avoid hitting thresholds that were  10 set for particular stores by McKesson or Anda or  11 another distributor?  12 MS. MONAGHAN: Object to form.  13 MR. KOBRIN: Object to form.  14 THE WITNESS: No. Like an example would  15 be?  16 BY MR. HUDSON:  17 Q. In other words, like the prescribing,  18 you choose to prescribe or fill orders with a  19 different product that wasn't up against that  20 threshold.  21 A. No.  22 (HBC-Bencivengo Exhibit 3 was marked.)  23 BY MR. HUDSON:  24 Q. Let me hand you what I marked as  25 Exhibit 3. My question is just if you could let</p>
<p style="text-align: right;">Page 67</p> <p>1 don't --  2 Q. Fair enough. I'm just trying to  3 understand what you personally know in terms of  4 how the reporting is done so that I could get some  5 sense of how many times those thresholds were  6 being bumped up against by particular stores. And  7 I guess what you're saying is talk to the office.  8 A. Correct.  9 Q. Anybody in particular at the office that  10 would be most knowledgeable?  11 MR. KOBRIN: Object to form.  12 THE WITNESS: George.  13 BY MR. HUDSON:  14 Q. George Chunderlik?  15 A. Um-hum.  16 Q. Do you know if there was ever a point in  17 time where McKesson would send out the thresholds  18 in advance of stores bumping up against those  19 thresholds, in other words, sending them out so  20 that Giant Eagle pharmacies would know what the  21 thresholds were for that month?  22 MR. KOBRIN: Object to form.  23 MS. MONAGHAN: Object to form.  24 THE WITNESS: Not the pharmacies.  25</p>	<p style="text-align: right;">Page 69</p> <p>1 me know if you've seen that document and if so,  2 describe for me what it is.  3 COUNSEL ON PHONE: Can we get a Bates  4 number on Exhibit 3, please?  5 MR. HUDSON: Sure. Exhibit 3 is  6 HBC_MDL00136237 through 238, but 238 is a  7 multi-page spreadsheet, Excel spreadsheet.  8 (Witness reviewed the exhibit.)  9 BY MR. HUDSON:  10 Q. Have you had a chance to review  11 Exhibit 3?  12 A. Yes.  13 Q. What is Exhibit 3?  14 A. It looks like it was an email that was  15 sent to all the district managers on a couple  16 stores that were getting close to hitting certain  17 thresholds.  18 Q. This is an email sent by Sabrina Cook.  19 At the bottom, do you see her signature page? It  20 shows she's an account manager at McKesson.  21 A. Yeah.  22 Q. Do you know Sabrina Cook?  23 A. No.  24 Q. Have you ever met Sabrina Cook to your  25 knowledge?</p>



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1 A. No.

2 Q. Do you have any recollection of

3 receiving this email?

4 A. I remember receiving emails like this on

5 stores. Like I said, this isn't all my stores.

6 This is a group of stores.

7 Q. So then if we could, turn to page 2 of

8 Exhibit 3. It looks like the title here is CSMP

9 Giant Eagle Threshold Report.

10 A. Okay.

11 Q. Do you see that?

12 A. Yes.

13 Q. It looks like this is an Excel

14 spreadsheet in its native format. If we go back

15 to the next page, I think this is the format. Are

16 you able to read this document, read and

17 understand the spreadsheet portion of it?

18 A. Yes.

19 Q. If you could, describe for me what you

20 know about this.

21 A. It looks like it was some stores that

22 were a couple of mine. It looks like a couple of

23 my stores are on here. They're looking at

24 thresholds that were sent. They're telling us

25 that they're starting to come up against their

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1 threshold. The low is 60 percent up to almost,

2 what, a hundred percent on one of them. It's just

3 a range. I took these as FYI emails.

4 Q. Sure. This was an email sent on

5 June 26. And then do you know if this spreadsheet

6 then is as of June 26 where these stores stood on

7 the thresholds that had been set by McKesson?

8 MR. KOBRIN: If you know.

9 MS. MONAGHAN: Object to form.

10 THE WITNESS: Yeah. If I'm to assume

11 the information is correct, then that's where

12 these stores stood when this email was sent.

13 BY MR. HUDSON:

14 Q. I'm just trying to establish the

15 foundation, I guess, is the legal term for the

16 document.

17 To the best of your knowledge, this is an

18 email with an Excel spreadsheet attached that has

19 thresholds for certain stores that had been set by

20 McKesson.

21 MS. MONAGHAN: Object to form.

22 BY MR. HUDSON:

23 Q. Is that your understanding?

24 MR. KOBRIN: Object to form. If you

25 know, if you understand it.

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1 THE WITNESS: That's my understanding.

2 BY MR. HUDSON:

3 Q. That's all I'm asking. And you

4 indicated that you've seen some of these from time

5 to time. Let me just hand you what I've marked as

6 Exhibit 4. I'm just going to mark a few more of

7 these. We can go through them all.

8 (HBC-Bencivengo Exhibits 4 - 8 were marked.)

9 BY MR. HUDSON:

10 Q. So we've marked here as Exhibits 3, 4,

11 5, 6, 7 and 8 documents. Let me just go through

12 and put on the record the Bates ranges of each

13 one. Exhibit 3 is HBC\_MDL00136237 through 238.

14 We talked about that one. Exhibit 4 is

15 HBC\_MDL00079510 through 511. Exhibit 5 is

16 HBC\_MDL00079386 through 387. Exhibit 6 is

17 HBC\_MDL00079491 through 92. Exhibit 7 is

18 HBC\_MDL00079213 through 214. And Exhibit 8 is

19 HBC\_MDL00174476 through 77.

20 Mr. Bencivengo, my question is just

21 Exhibits 3 through 8, are these the same type of

22 reports that are being sent by McKesson to Giant

23 Eagle PDLs, including yourself, relating to

24 certain thresholds for controlled substances?

25 MR. KOBRIN: If you know.

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1 MS. MONAGHAN: Object to form.

2 THE WITNESS: Yes, to certain stores.

3 BY MR. HUDSON:

4 Q. And was it your practice to review these

5 spreadsheets when you received them?

6 A. Yes.

7 Q. And why did you review them?

8 A. Well, they were being sent to me. We're

9 looking at the parameters. Being in operations,

10 if we don't get drugs, it affects operations. So

11 a lot of these reports we're all copied on because

12 she doesn't know whose stores we have. We have a

13 bunch of emails with my name on them.

14 Exhibit 4, I would have gotten that. I would

15 have went to the fifth column. I would look at

16 those store numbers and deleted it because none of

17 my stores were on there. It would be another FYI.

18 Q. Sure. Do you know why the decision was

19 made to send these reports to Giant Eagle?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: I don't know, no.

22 BY MR. HUDSON:

23 Q. Do you know when you started receiving

24 these reports?

25 A. I want to say in 2013, yeah, 2013.

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1 Q. And so you've testified if you looked at  
2 the report and you didn't see any of your stores,  
3 then you likely deleted it and it was done.  
4 If you did see your stores, then what would  
5 you do?  
6 A. I would go over to -- I'd go over to the  
7 last column, which is threshold percent, and kind  
8 of see where they're standing.  
9 Q. So let's just take Exhibit 3, for  
10 example. If we turn to the third page of  
11 Exhibit 3, and you said you'd look for your stores  
12 in the fifth column over, that would be the Base  
13 Code column; right?  
14 A. Yeah, the store number, number 2404.  
15 Q. Right. So then if you saw certain of  
16 your stores, then you would go to the far right  
17 column that's called the Threshold Percent Column?  
18 A. Um-hum.  
19 Q. Then you would look to see how close to  
20 a hundred percent those stores were?  
21 A. Correct.  
22 Q. And if the stores were close to a  
23 hundred percent, what would you do?  
24 A. Look at the date of the email. It's  
25 June 26. Probably not do much on this one. We're

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1 getting towards the end of the month.  
2 Q. It's June 26. What would be the store  
3 numbers that would be stores in your territory on  
4 this report that's Exhibit 3?  
5 A. We'll start on page 2.  
6 Q. Just for the record, you mean the fourth  
7 page of the exhibit, the second page of the  
8 spreadsheet?  
9 A. 136238. 1154.001. Are you there?  
10 Q. Yep.  
11 A. Store 0216.  
12 Q. 0216. I got it. 0216. Okay.  
13 A. They're at 98 percent.  
14 Q. Yes.  
15 A. I'm still not doing anything. I wasn't  
16 a big fan of increasing these thresholds unless  
17 there was -- like I said, there had to be a reason  
18 to do it. But I'm willing to wait out three more  
19 days of June to have it reset.  
20 It looks like store 43 was mine. It's at  
21 79 percent. Then the last store at the bottom,  
22 4032, was mine.  
23 Q. Were there ever times that you can  
24 recall when you received these spreadsheets and  
25 then took steps to try to increase thresholds for

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1 particular stores?  
2 MR. KOBRIN: Object to form.  
3 THE WITNESS: I would never act on my  
4 own to increase the threshold. I might make a  
5 call to see what was going on, if they needed it,  
6 but I wouldn't increase the threshold. The only  
7 time I increased the threshold was the store  
8 usually reached out to me and said, our order is  
9 being held up and these are the reasons why.  
10 Then I would push back and say, well, why do  
11 we need -- I didn't give them numbers. They all  
12 know about a threshold. You know about a  
13 threshold. You know you're allowed to order so  
14 many. You're reaching that. What's the reasons?  
15 Then if those reasons were determined to be  
16 valid reasons, then my recommendation would be to  
17 increase it. I will tell you that was not the  
18 case most of the time.  
19 BY MR. HUDSON:  
20 Q. Did any pharmacist ever indicate to you  
21 that having thresholds applied so that medicines  
22 would then not be available to be dispensed was  
23 bad for business?  
24 A. No. Listen, pharmacists don't even want  
25 to dispense this stuff. So there's no -- it makes

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1 their life a hell of a lot easier if they can hand  
2 it back and say we can't get it. So there's no...  
3 Q. You never remember times where people  
4 were indicating that if you had to apply the  
5 thresholds, that would be problematic for  
6 business?  
7 A. It would be problematic for business --  
8 I'm trying to think of some times it might happen.  
9 Because there were two separate ordering systems  
10 that were being used here, too, the hand ordering  
11 and then the CSOS. There was a slower turnaround  
12 time if you had a hand order.  
13 So if there was a situation where McKesson  
14 would be closed, it was a holiday, that holiday  
15 bumped into a weekend, so something like that,  
16 there would have to be a reason why. Just not  
17 good for business is never a reason why.  
18 (HBC-Bencivengo Exhibit 9 was marked.)  
19 BY MR. HUDSON:  
20 Q. I'll show you this email. I will  
21 represent to you that this was an email that I  
22 think we found in your custodial email file.  
23 MR. KOBRIN: This is nine?  
24 MR. HUDSON: This is nine, yeah.  
25

<p style="text-align: right;">Page 78</p> <p>1 BY MR. HUDSON:</p> <p>2 Q. This was an email between Jerry</p> <p>3 Liliestedt --</p> <p>4 A. Liliestedt, yeah.</p> <p>5 Q. Who is Jerry Liliestedt?</p> <p>6 A. He was a PDL at the time.</p> <p>7 Q. -- and then the manager of 4016.</p> <p>8 A. Okay.</p> <p>9 Q. Do you know if that was you or someone</p> <p>10 else?</p> <p>11 A. Well, this would have been Jerry's</p> <p>12 store. So the manager, whoever it was. Probably</p> <p>13 Ross down at 4016 down in Bolivar.</p> <p>14 MR. KOBRIN: Just for the record, the</p> <p>15 witness' name is not anywhere on this. Are you</p> <p>16 representing that this was in his custodial file?</p> <p>17 MR. HUDSON: Yeah.</p> <p>18 COUNSEL ON PHONE: Could we get a Bates</p> <p>19 number for Exhibit 9?</p> <p>20 MR. HUDSON: Exhibit 9 is</p> <p>21 HBC_MDL00179250.</p> <p>22 THE WITNESS: I don't see 4016. I see</p> <p>23 5878 on here.</p> <p>24 BY MR. HUDSON:</p> <p>25 Q. 4016. If you look in the To and the</p>	<p style="text-align: right;">Page 80</p> <p>1 second page of this exhibit, this is an email from</p> <p>2 Manager 4030 Rx. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And then it's to two different</p> <p>5 distribution lists; right?</p> <p>6 A. Yeah. The manager from the store is</p> <p>7 sending it to other stores.</p> <p>8 Q. And he's sending it to -- one</p> <p>9 distribution list is STR_Pharmacy_COD?</p> <p>10 A. Correct.</p> <p>11 Q. Who is that list?</p> <p>12 A. The pharmacies in Cleveland, Akron,</p> <p>13 Canton and Cleveland.</p> <p>14 Q. Those are the pharmacies in Akron,</p> <p>15 Canton and Cleveland. Okay. And then there's</p> <p>16 another distribution list there STR_Pharmacy_COL.</p> <p>17 A. Columbus.</p> <p>18 Q. And would you have been a recipient on</p> <p>19 one or both of those distribution lists?</p> <p>20 A. I don't know. I don't know if I get the</p> <p>21 COD ones. I have my distribution list. There's</p> <p>22 so many distribution lists. I don't know if I am</p> <p>23 or not at that time.</p> <p>24 Q. You may or may not, you just don't know?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 79</p> <p>1 From, manager 4016, does that mean the manager of</p> <p>2 store 4016?</p> <p>3 A. My two says manager 5078 Rx.</p> <p>4 MR. HUDSON: Let's just take two minutes</p> <p>5 and go off the record.</p> <p>6 THE VIDEOGRAPHER: We're going off the</p> <p>7 record. The time is 4:20 p.m.</p> <p>8 (Recess from 4:20 p.m. to 4:21 p.m.)</p> <p>9 THE VIDEOGRAPHER: We're going back on</p> <p>10 the record. The time is 4:22 p.m.</p> <p>11 MR. HUDSON: For the record, I'm</p> <p>12 withdrawing what I previously marked as Exhibit 9.</p> <p>13 Exhibit 9 is HBC_MDL00179373 through 374. I'll</p> <p>14 give a copy to the witness, your copies.</p> <p>15 BY MR. HUDSON:</p> <p>16 Q. Mr. Bencivengo, I will again represent</p> <p>17 to you that this Exhibit 9 is an email chain that</p> <p>18 we've identified as coming from your custodial</p> <p>19 file.</p> <p>20 MR. KOBRIN: I just want to state for</p> <p>21 the record that his name is not on it. That would</p> <p>22 suggest that it's not something he's ever seen</p> <p>23 before. But I understand you representation.</p> <p>24 BY MR. HUDSON:</p> <p>25 Q. Mr. Bencivengo, if you turn to the</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. So in the first email, the manager in</p> <p>2 store 4030, do you know which store that is?</p> <p>3 A. Tallmadge.</p> <p>4 Q. Say it again.</p> <p>5 A. Tallmadge.</p> <p>6 Q. Spell it.</p> <p>7 A. T-A-L-L-M-A-D-G-E.</p> <p>8 Q. That's Tallmadge in Ohio?</p> <p>9 A. It's in Ohio. It's in the Akron area.</p> <p>10 Q. So the manager of that store is writing</p> <p>11 to the other pharmacists on that distribution list</p> <p>12 that you've identified with the subject of Vicodin</p> <p>13 Quota, question mark, question mark, question</p> <p>14 mark. "Has anyone ever heard of a Giant Eagle</p> <p>15 store that's met its quota of Vicodin generic for</p> <p>16 the year and is not able to dispense any more</p> <p>17 because they can't order any more and, therefore,</p> <p>18 have to transfer out all the Rx's for Vicodin that</p> <p>19 have refills," there's a bunch of question marks.</p> <p>20 "If this is the case, I need to know if I'm</p> <p>21 getting close to our quota," bunch of exclamation</p> <p>22 points. "Thanks to anyone who can shed light on</p> <p>23 this subject."</p> <p>24 And then down below, it says, "Barb, how can</p> <p>25 we get around this," bunch of questions marks. "I</p>

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1 have no strengths coming in. Steve."  
2 Do you know who Steve is?  
3 A. No, no. I'm assuming Barb --  
4 MR. KOBRIN: Don't assume.  
5 THE WITNESS: Barb Carlson was a  
6 district manager, and she had store 4030 in 2008.  
7 BY MR. HUDSON:  
8 Q. Then if we go to the first page, it says  
9 this is from Jerry Liliestedt to Greg Carlson with  
10 a copy to STR\_Pharmacy\_Specialists.  
11 A. Correct.  
12 Q. So this would be you?  
13 A. The pharmacy district leaders.  
14 Q. So this would be a forward by  
15 Mr. Liliestedt or I guess it would be from him to  
16 Greg Carlson with a copy to you and the other  
17 PDLs?  
18 A. Yes.  
19 Q. He wrote here, "Greg, store 5878 has  
20 outgrown their CIII usage. Can we adjust their  
21 numbers ASAP. They are dealing with a Fuelperks!  
22 coupon." Do you know what that is?  
23 A. Yes.  
24 Q. What's a Fuelperks! coupon?  
25 A. Back in those days, we used to run gift

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1 cards to compete with the other pharmacies. We'd  
2 run promos where if you bring in -- you transfer  
3 your prescription, you'd get a \$25 gift card for  
4 the store. There's parameters on it.  
5 Q. So the Fuelperks! coupon was like a --  
6 was it a pharmacy coupon?  
7 A. It was for the store. It was for like  
8 either \$20, \$25 off groceries, X amount off your  
9 gas.  
10 Q. You could use it anywhere in the store  
11 including the pharmacy?  
12 A. No, not the pharmacy. It came from the  
13 pharmacy. You couldn't use it in the pharmacy.  
14 Q. "They're dealing with a Fuelperks!  
15 coupon, and I don't know where they'll end up.  
16 This goes for generic Vicodin and many other  
17 CIIIs. If you'd like, I can fax you their latest  
18 invoice that shows the myriad of items they are  
19 being denied. Very bad for business. Thanks for  
20 your help."  
21 Do you know what Jerry meant by that when he  
22 wrote that to Greg Carlson?  
23 A. We were losing scripts it looks like at  
24 that store. We weren't getting another order.  
25 Q. Jerry at least was saying that's bad for

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1 business?  
2 A. In Jerry's opinion, yes.  
3 Q. This would be an example of at least one  
4 pharmacist who is indicating where thresholds were  
5 preventing prescriptions from being dispensed,  
6 that was bad for business?  
7 MR. KOBRIN: Object to form.  
8 BY MR. HUDSON:  
9 Q. Would you agree with that?  
10 A. If you can't fill any prescriptions,  
11 right, it's bad for business.  
12 Q. Then if we go to the top, it's from  
13 Donald Casar. What was Donald Casar's role?  
14 A. I believe at the time he was actually --  
15 he was a PDL. Then he took over the quality  
16 program, but I think in 2008 he worked out of  
17 Columbus. He was the PDL in Columbus.  
18 Q. So he wrote back to Jerry and Greg  
19 Carlson and the PDLs and Anthony Mollica and Betty  
20 McGeary?  
21 A. She was our secretary at the time.  
22 Q. He wrote back to them in response and  
23 said, "Greg is on vacation this week. I spoke to  
24 Telicia Lyndsey at McKesson, and there are  
25 thresholds that each store has based on prior

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1 month's usage for certain controlled substances.  
2 It's a program that DEA has launched in May of  
3 this year to decrease the likelihood of diversion.  
4 "Since thresholds are set according to  
5 monthly usage, all stores that were having issues  
6 will be able to order today and receive product  
7 tomorrow (it is now July).  
8 "Greg will have to work with McKesson on  
9 stores that may need their thresholds increased or  
10 decreased. Hope this helps."  
11 Do you see that?  
12 A. Yes, sir.  
13 Q. Would you be copied on emails like this  
14 where there were discussions about thresholds from  
15 time to time?  
16 MR. KOBRIN: Object to form. Calls for  
17 speculation.  
18 THE WITNESS: I'm copied on 300 emails a  
19 day. This was Jerry having an issue with his  
20 store. He's probably copying us in case we were  
21 having the same issues.  
22 BY MR. HUDSON:  
23 Q. Did you have any issues with any of your  
24 stores in Ohio like Jerry was having in this  
25 particular instance in 2008?



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1 A. I would say yes.  
2 Q. Did you ever have instances where  
3 pharmacists in your territory indicated to you  
4 that these thresholds were bad for business?  
5 A. I don't remember them saying bad for  
6 business. I have to see the context of how they  
7 were saying it.  
8 Q. Did you have any pharmacists that were  
9 saying bad for business in the same way that Jerry  
10 was saying it here in Exhibit 9 that we've been  
11 looking at?  
12 A. No.  
13 MR. KOBRIN: Object to form.  
14 BY MR. HUDSON:  
15 Q. I'm sorry. I didn't hear your answer.  
16 A. No.  
17 Q. Did you ever have any discussions with  
18 anyone at McKesson that you recall about adjusting  
19 thresholds?  
20 MS. MONAGHAN: Object to form.  
21 THE WITNESS: No.  
22 BY MR. KOBRIN:  
23 Q. Would that be true between 2009 and  
24 2016? To the best of your knowledge, as you sit  
25 here, you can't recall having any discussions

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1 directly with McKesson about adjusting thresholds  
2 for stores in your territory?  
3 MR. KOBRIN: Object to form.  
4 THE WITNESS: Let me get a  
5 clarification. When you say discussions, am I  
6 picking up the phone and calling McKesson, or am I  
7 responding to an email that someone might have  
8 sent from McKesson or Greg?  
9 BY MR. HUDSON:  
10 Q. Either one.  
11 A. There were probably instances and times  
12 when I responded to some emails.  
13 Q. Putting those emails to one side, any  
14 time that you picked up the phone and talked to  
15 anyone at McKesson --  
16 MS. MONAGHAN: Object to form.  
17 BY MR. HUDSON:  
18 Q. -- about adjusting thresholds for  
19 particular stores?  
20 A. No.  
21 MR. KOBRIN: Object to form.  
22 BY MR. HUDSON:  
23 Q. Are you aware of whether there were  
24 other PDLs at Giant Eagle who did have discussions  
25 with McKesson about adjusting thresholds?

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1 MR. KOBRIN: Object to form.  
2 THE WITNESS: No.  
3 BY MR. HUDSON:  
4 Q. In other words, as you sit here today,  
5 you just don't know one way or the other?  
6 A. We would call our people in RIDC and let  
7 them take care of it.  
8 Q. What's in RIDC?  
9 A. That's just a nickname we use for the  
10 office out here in Pittsburgh.  
11 Q. In the corporate offices?  
12 A. Um-hum.  
13 Q. Who would be most likely to be involved  
14 in those phone calls between you and the corporate  
15 office?  
16 MR. KOBRIN: Object to form. Regarding?  
17 THE WITNESS: Regarding threshold?  
18 BY MR. HUDSON:  
19 Q. Yeah.  
20 A. Greg Carlson.  
21 Q. Are there times where you can remember  
22 calling Greg Carlson to talk about adjusting  
23 thresholds at particular stores, McKesson  
24 thresholds?  
25 MR. KOBRIN: Object to form.

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1 THE WITNESS: I don't ever remember  
2 calling Greg and talking to him about it.  
3 BY MR. HUDSON:  
4 Q. Do you know whether -- are you aware of  
5 any times where other PDLs would have  
6 communication with Greg Carlson or others in the  
7 corporate office about adjusting thresholds set by  
8 any distributors?  
9 MS. MONAGHAN: Object to form.  
10 MR. KOBRIN: Object to form.  
11 THE WITNESS: No.  
12 BY MR. HUDSON:  
13 Q. Did you ever come to learn that HBC as a  
14 distributor of hydrocodone combination products  
15 and other Schedule III, IV and V controlled  
16 substances had set thresholds?  
17 A. In my area, threshold was an umbrella  
18 term. I don't know if it was HBC, if it was  
19 McKesson, if it was Anda. It was just a threshold  
20 I was looking at. So I didn't determine who it  
21 came from or who made these thresholds. My job  
22 was to act on the threshold and determine what we  
23 were going to do.  
24 Q. Sure. In your role, did you have any  
25 understanding of which distributors had set



<p style="text-align: right;">Page 90</p> <p>1 thresholds or just in general these are thresholds 2 that our stores have to live with and you never 3 really knew who the source of the threshold was? 4 MR. KOBRIN: Object to form. 5 THE WITNESS: That's correct. 6 BY MR. HUDSON: 7 Q. Just to be clear, the latter, that you 8 didn't know? 9 A. I didn't know. 10 Q. Did you understand though at some point 11 HBC, an operating arm of Giant Eagle, started to 12 distribute certain controlled substances into the 13 Giant Eagle retail pharmacies? 14 A. Yes. 15 Q. Did that have any impact on your job? 16 In other words, did that make any changes to what 17 you did as a PDL for controlled substances that 18 were coming from HBC as opposed to those coming 19 from McKesson or Anda? 20 MR. KOBRIN: Object to form. 21 THE WITNESS: No. 22 (HBC-Bencivengo Exhibit 10 was marked.) 23 BY MR. HUDSON: 24 Q. I want to shift gears now and talk about 25 the pharmacy audits that you were talking about</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. HUDSON: HBC_MDL00041837 through 2 850. 3 BY MR. HUDSON: 4 Q. It looks like there's -- from the 5 attachments, it looks like there's four different 6 PDFs that were attached to this email relating to 7 the narcotic audits. 8 Would these have been documents that you 9 looked at back in January of 2013? 10 A. Yes. 11 Q. Did you then begin to use this program 12 to input information for purposes of narcotic 13 audits? 14 MR. KOBRIN: If you remember. 15 THE WITNESS: Our stores did, yeah. 16 BY MR. HUDSON: 17 Q. Tell me, if you would, how that worked. 18 MR. KOBRIN: Object to form. 19 THE WITNESS: We always had -- we did 20 monthly counts of our narcotics, our CIIs, our 21 safe, from the time I got there, from 2000. And 22 then some stores kept a perpetual inventory in a 23 binder. Some stores kept it on an Excel sheet. 24 So we were all doing it, but all doing it a 25 different way.</p>
<p style="text-align: right;">Page 91</p> <p>1 previously. So I'm going to hand you what I 2 marked as Exhibit 10. 3 MR. HUDSON: Exhibit 10, the internal 4 number is 5033. 5 BY MR. HUDSON: 6 Q. Mr. Bencivengo, is Exhibit 10 an email 7 from George Chunderlik to you and others with the 8 subject Narcotic Audit Application? 9 A. Yes. 10 Q. And he's sending this in January of 11 2013? 12 A. Yes. 13 Q. And then attached to this email, it 14 looks like the first page, so page 2 of the 15 exhibit, at the top the title is Store 16 Requirements Summary, Narcotic Audit Application, 17 and then it walks through and talks about how to 18 create a baseline and then how the narcotic audit 19 program is going to work. 20 MR. KOBRIN: Object to form. 21 BY MR. HUDSON: 22 Q. Is that right? 23 A. That's what it looks like, yes. 24 COUNSEL ON PHONE: Can we get a Bates 25 number on this exhibit when you have a chance?</p>	<p style="text-align: right;">Page 93</p> <p>1 So we got to the point where floaters would 2 come in, dispense something. They didn't know if 3 they should go to the binder, to a program. So it 4 was decided that although we were already doing 5 it, we were going to write this program and have 6 it done all one way, the same way through all the 7 stores. So that's basically why this was 8 developed. 9 BY MR. HUDSON: 10 Q. Just describe for me then how this 11 program worked and what you as a PDL did as part 12 of this process to start narcotic audits. 13 A. So we started step one with the 14 baseline. And then from that point on, the 15 monthly requirement is every store needs to 16 complete an audit. So the requirement is every 17 month. So January to January 31 you have to do 18 it. 19 The program is set up to start flagging on 20 the 30th if they're getting up to 30 days. So if 21 they did it January 10, but they're for some 22 reason going to do it February 15, I'll start 23 getting emails that store XXX is out of 24 compliance. Even though they're not, they still 25 have all of February to do it, it's just alerting</p>

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1 me that these stores are still -- so I'll monitor  
2 those as we get towards the end of the month.  
3 Maybe four or five days before the end of the  
4 month, if I have any left, I'll pick up the phone  
5 and say, look, just a reminder. You guys haven't  
6 done your audit yet. And every store does this  
7 every month. There's never been an issue with the  
8 store not completing an audit.  
9 Q. So the store inputs information, and  
10 then what happens to that?  
11 A. Into this program. So then once the  
12 purchases and dispensings and everything is into  
13 the program, I'll get a sheet or I'll get an email  
14 that the store submitted it. And then I'll  
15 actually get different -- like I might get three  
16 or four drugs that were one off or one over or 30  
17 over. We want to know why.  
18 And a lot of times it's just the way orders  
19 were applied. But if something is on there that's  
20 off, there has to be a reason it's off. It can't  
21 just be unknown. If it's a tablet, sometimes it  
22 might just be a discount. If it's a bottle, then  
23 we're going to dig into it quickly and find out  
24 what the heck happened to it. That's the purpose  
25 of this.

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1 Q. And then would a report be generated  
2 that would show the comparison between whatever  
3 the baseline was at the start of the month to the  
4 end of the month, or how did the audit process  
5 work?  
6 A. There's two columns. It would say  
7 Expected, On Hand. So if you expected to have 30  
8 and you had 29 on hand, there's another column  
9 that you have to put a reason. A lot of times if  
10 you look at the problem, it's a broken tablet.  
11 That's the reason why we're short.  
12 Again, if it says expected 600 and we have  
13 400 and they have unknown, something has to  
14 happen. That's my job, to start the  
15 investigation.  
16 Q. And when, if you recall, did these  
17 reports begin to be generated?  
18 A. The first time they put the report in is  
19 when we get monthly emails. From the time we  
20 started this, whenever it was determined we were  
21 going to start this -- if we started it in --  
22 Q. And that's what I was trying to figure  
23 out. When did it start? I mean, it's sometime  
24 after January of 2013; right?  
25 A. Correct. I would assume because we had

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1 a conference call on this thing, it was rolled out  
2 very quickly. So whenever this started, those  
3 reports started generating.  
4 Q. So sometime in early 2013, Giant Eagle  
5 started creating these narcotic audit reports?  
6 MR. KOBRIN: Object to form. He  
7 testified that they were doing it prior to that.  
8 THE WITNESS: We always were doing -- we  
9 always were counting monthly. This was just a way  
10 we all do it uniformly.  
11 BY MR. HUDSON:  
12 Q. Right. But you didn't have the reports  
13 following this program; right?  
14 A. Following this program, no.  
15 Q. That's all I was getting at. So this  
16 email, Exhibit 10, there's a program that's now  
17 being implemented. And as a result of that, then  
18 there's going to be a monthly audit process that's  
19 going to be the same at all of the pharmacies  
20 across all of Giant Eagle?  
21 A. Correct.  
22 Q. Then once these reports began being  
23 generated, for stores in your territory, would you  
24 say that there were a small amount of audit  
25 problems, a large amount? What did those reports

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1 look like?  
2 MR. KOBRIN: Object to form.  
3 THE WITNESS: For the most part, they're  
4 dead on. There's times where, like I said, you'll  
5 get something that's off. If it's usually a  
6 bottle, it's usually either something was ordered,  
7 it wasn't applied at the time we counted it, so  
8 the computer thought we had something. But then  
9 they'll have in the response "On order for  
10 tomorrow." It just wasn't applied yet. So when  
11 you apply the order, all of a sudden, we have the  
12 right amount again.  
13 So a lot of times it's just counting. It's  
14 just when the reports were ran and what you have  
15 sort of in queue to order.  
16 BY MR. HUDSON:  
17 Q. Let's say if there's 30 stores in your  
18 territory, how many would you say have issues in  
19 any given month?  
20 MR. KOBRIN: Object to form. What do  
21 you mean by issues?  
22 MR. HUDSON: Issues where the count is  
23 off or the expected is different than the actual.  
24 MR. KOBRIN: Object to form.  
25 THE WITNESS: Once or twice. It's not

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1 that big of an issue, because we counted so many  
2 times. We're so controlled on it that we -- we're  
3 doing back -- every prescription you're filling --  
4 so you come in and fill a prescription. I count  
5 it twice. I back count it.  
6 There's a program we have in the computer  
7 that says you should have, and we see if that  
8 matches up. So we're doing it daily as we're  
9 dispensing, and we're doing it monthly, and then  
10 we're doing it yearly.  
11 BY MR. HUDSON:  
12 Q. And that's what I'm trying to get a  
13 sense of, is when you would get those monthly  
14 audit reports for the stores in your territory,  
15 there'd maybe be one item per store --  
16 A. Yeah.  
17 Q. -- or would there be some times where  
18 there's --  
19 A. If maybe --  
20 Q. If I could finish my question.  
21 In a given month are there stores where there  
22 are no discrepancies between expected and actual?  
23 MR. KOBRIN: Object to form. Are you  
24 counting the, quote-unquote, counting issues that  
25 he referred to earlier, or are you asking him for

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1 things that aren't explained?  
2 BY MR. HUDSON:  
3 Q. Did you understand my question?  
4 A. Yeah. Yes, there is. But most of it is  
5 either a broken tablet -- it's accounted for. I  
6 don't get too many reports that say unknown. If  
7 there's an issue, in the next column, there's a  
8 reason why it's short.  
9 Q. Well, I guess what I'm trying to just  
10 get a sense of is how big overall are the actual  
11 reports that get emailed to you? Size-wise are  
12 they big? In other words, are you dealing with  
13 five issues, are you dealing with 50 issues in any  
14 given month?  
15 MR. KOBRIN: Object to form.  
16 BY MR. HUDSON:  
17 Q. Does it change greatly, or is it pretty  
18 uniform?  
19 MR. KOBRIN: Object to form. I'm  
20 unclear what you mean by issues. He's kind of  
21 talked about different levels of problem here.  
22 THE WITNESS: Issues, I'm not sure what  
23 kind of issues we're talking about. It's anywhere  
24 from maybe two to ten drugs that they identify on  
25 there. It doesn't mean there's issues. Sometimes

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1 there's two drugs and the counts are dead on.  
2 BY MR. HUDSON:  
3 Q. It's my understanding as part of these  
4 narcotic audits, reports are generated. Do I have  
5 that right?  
6 A. Yes.  
7 Q. And those are generated each month;  
8 right?  
9 A. Yes.  
10 Q. And those reports are then emailed or  
11 somehow sent to you?  
12 A. Yes.  
13 Q. And do the reports include only your  
14 stores or all of the stores for all of the  
15 different PDLs?  
16 A. Just my stores.  
17 Q. So you only get a report that has just  
18 your stores?  
19 A. When store 4016 submits it, hits send, I  
20 get an email that it was completed with that sheet  
21 on there that I was telling you about if there's  
22 any discrepancies.  
23 Q. And then is there some sort of  
24 compilation document that gets created each month  
25 that shows just the total audit for all of Giant

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1 Eagle?  
2 A. Again, there could be. I'm not  
3 privileged to that report. I'm responsible for my  
4 32 stores.  
5 Q. So each month for your 32 stores, are  
6 you getting an individual report from each store?  
7 A. Yes.  
8 Q. And you're saying in any given month on  
9 average -- and I know these are just averages --  
10 but each particular store would have how many  
11 different line items on the report that's sent to  
12 you?  
13 MR. KOBRIN: Object to form.  
14 THE WITNESS: It could be anywhere --  
15 I've seen two items on there up to 20 items on  
16 there. I mean, there's no -- again, I don't want  
17 to cloud the word issues. It doesn't mean there's  
18 any issues on there. It's just these were off.  
19 Here's the reason why. We're good.  
20 BY MR. HUDSON:  
21 Q. If there was an audit though and there  
22 was an expected amount and then there was an  
23 actual amount, there's an issue in the sense that  
24 the count was off; right?  
25 MR. KOBRIN: Object to form.

<p style="text-align: right;">Page 102</p> <p>1 Argumentative.</p> <p>2 THE WITNESS: I'll give you one example,</p> <p>3 the one I keep using. I'm expecting to have 30</p> <p>4 Ritalin in the bottle. I only have 29. I go to</p> <p>5 the next column. It says broken tablet. On the</p> <p>6 next visit, I'm going to go in and make sure</p> <p>7 there's a broken tablet in there. If there's a</p> <p>8 broken tablet in there, we don't have an issue.</p> <p>9 BY MR. HUDSON:</p> <p>10 Q. Right. And I guess all I was getting at</p> <p>11 is the idea of the audit is each line item on</p> <p>12 there is a potential issue that's been raised.</p> <p>13 And you're saying you would then go and</p> <p>14 investigate and determine whether or not it's a</p> <p>15 real issue or something that's already been</p> <p>16 addressed?</p> <p>17 MR. KOBRIN: Object to form.</p> <p>18 Misrepresents his testimony.</p> <p>19 THE WITNESS: That's actually correct.</p> <p>20 If the report says here's a potential problem, as</p> <p>21 long as there's no -- like I said, in that next --</p> <p>22 the next column is the column we keep forgetting</p> <p>23 to talk about. If there's a reason in there, then</p> <p>24 nine times out of ten, it's because an order</p> <p>25 wasn't applied yet. There's an open 222 form.</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. HUDSON:</p> <p>2 Q. Have you had a chance to look at</p> <p>3 Exhibits 11 and 12?</p> <p>4 A. Yes.</p> <p>5 Q. The front of Exhibit 11 is dated</p> <p>6 July 7th of 2013, and it looks like this is an</p> <p>7 Excel workbook with the title Copy of Narcotic of</p> <p>8 Audit Chain Discrepancies Summary_07-01-13. And</p> <p>9 then the location was the F:\Randy Heiser\Quality</p> <p>10 Folder_Joe Millward\compliance</p> <p>11 information.zip\compliance information\compliance</p> <p>12 information\controlled drug procedure\monthly</p> <p>13 audit summaries. Did I get that right?</p> <p>14 A. Yes.</p> <p>15 Q. I'm guessing this probably is not the</p> <p>16 form in which you've ever seen these narcotic</p> <p>17 audits.</p> <p>18 A. When the store does the report, this is</p> <p>19 exactly how the report comes to me per store.</p> <p>20 Q. Right. That's what I was going to say.</p> <p>21 The worksheet is in the same format as the store</p> <p>22 submits it into the program, but this compilation</p> <p>23 document is probably not anything that you as a</p> <p>24 PDL would see because it looks like this covers</p> <p>25 all of the pharmacies.</p>
<p style="text-align: right;">Page 103</p> <p>1 That's the reason. They're not short. They're</p> <p>2 short on paper.</p> <p>3 BY MR. HUDSON:</p> <p>4 Q. Right. And that's all I'm getting at.</p> <p>5 The audit is supposed to bring to your attention</p> <p>6 or the organization's attention where there's a</p> <p>7 potential issue because the count is off on paper.</p> <p>8 But your point is that doesn't mean there's</p> <p>9 an actual real problem with the product. It may</p> <p>10 or may not mean that depending on what the</p> <p>11 explanation is?</p> <p>12 MR. KOBRIN: Object to form.</p> <p>13 THE WITNESS: That's correct.</p> <p>14 BY MR. HUDSON:</p> <p>15 Q. So I've tried to find examples. I'll</p> <p>16 just mark a couple of documents and see if these</p> <p>17 are. What I'm marking as Exhibit 11 is Bates</p> <p>18 labeled HBC_MDL00032853, but the native document</p> <p>19 is a multi-page spreadsheet. I'll hand you that.</p> <p>20 MR. KOBRIN: Do you know if</p> <p>21 Mr. Bencivengo has seen this document?</p> <p>22 MR. HUDSON: I don't. We'll get there.</p> <p>23 I'll mark this Exhibit 12.</p> <p>24 (HBC-Bencivengo Exhibits 11 - 12 were marked.)</p> <p>25</p>	<p style="text-align: right;">Page 105</p> <p>1 A. These are all the pharmacies; correct.</p> <p>2 Q. So, for example, if we look at</p> <p>3 Exhibit 11, it looks like this was the narcotic</p> <p>4 audit chain discrepancy summaries from June 1,</p> <p>5 2013 through June 30, 2013; right?</p> <p>6 A. Okay.</p> <p>7 Q. Do you see that at the top?</p> <p>8 A. Yeah.</p> <p>9 Q. So this would be the June 2013 one. And</p> <p>10 then it looks like the first 16 pages would</p> <p>11 relate -- well, the first 15 pages plus half of</p> <p>12 the 16th page looks like on the left you are</p> <p>13 identified as the specialist for those stores.</p> <p>14 A. Okay.</p> <p>15 Q. So if I'm understanding you right, you</p> <p>16 would have expected or you would have received</p> <p>17 from each one of the stores here a list of audit</p> <p>18 discrepancies for those particular stores as</p> <p>19 opposed to receiving it in this one big</p> <p>20 compilation document?</p> <p>21 A. Correct. This answers the question</p> <p>22 better that you asked me the first time. So if</p> <p>23 you look at the first page, down where it says</p> <p>24 pharmacy 178, down to pharmacy 178, that's the</p> <p>25 email I get for store 178, right there. Then from</p>



<p style="text-align: right;">Page 106</p> <p>1 201 and vice versa.  2 Q. And so on and so on.  3 A. So by the time this report is generated,  4 I've already seen all these. I've already taken  5 action on all these. It's a nonreport. Like I  6 said, if it's sent, it's deleted. I don't need  7 it. I've already seen these reports.  8 Q. Got it. So this report, and this is  9 just one example, but for June of 2013, for  10 pharmacy No. 178, it looks like there's 18 issues  11 for that store; right?  12 A. Okay.  13 Q. And then you said though you've got to  14 go look at the discrepancy column to try to figure  15 out whether there's some sort of discrepancy  16 identified or not; right?  17 A. Correct.  18 Q. So for store 178, it looks like there's  19 a variety of different explanations here. The  20 first one, it looks like there were 20, a  21 difference of 20. Then the next one was 20 and  22 then 24, 25, 10, 10, 130, 70, 140, 2, 1, 1, 300,  23 1, 75, 140, 75 and 120. So the discrepancies vary  24 quite a bit --  25 A. Yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 So when you build the prescription, if I  2 have -- we'll look at the first one on top because  3 it's easy. So if I have a prescription for ten of  4 these patches and I bill for ten, you can only  5 bill at the time. It's the time this report was  6 ran. You can only bill for one generic  7 manufacturer. So you bill for the one generic  8 manufacturer, but you used five of this generic  9 and five of another generic.  10 So when the reports were ran, we billed for  11 ten of this. We only have five. It says we're  12 minus five. But on the other one, we didn't bill  13 for it at all. We used that to complete the  14 order. So we're up and over. So they had the  15 correct amount of patches on the shelf. It's not  16 an issue.  17 BY MR. HUDSON:  18 Q. How do you know if it's not an issue  19 though?  20 MR. KOBRIN: Object to form. He just  21 explained.  22 THE WITNESS: Because that's why. We're  23 using up old NDC numbers to start using new  24 product.  25</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. -- in size; right?  2 MR. KOBRIN: Object to form.  3 BY MR. HUDSON:  4 Q. And then, for example, if we look down  5 to the -- the count is off by one. Where the  6 expected was 168 and the actual was 167, the count  7 is off by one, and that would be an example like  8 you talked about where there's one broken tablet  9 there; right?  10 A. Correct.  11 Q. In a number of these though they say we  12 are -- like, for example, if you go down a few  13 from that one, the expected was 250, but the  14 actual was 110. It says we're 140 short on this  15 NDC because we are 140 over on NDC 406036301 which  16 we used up to get rid of that NDC. What's that  17 mean?  18 MR. KOBRIN: Object to form.  19 THE WITNESS: As you know, there's  20 different generic manufacturers. We try to stick  21 to one, but there was periods of time where either  22 something is unavailable, it's not under contract  23 anymore, so you've got to switch manufacturers.  24 But you still have to use the old manufacturer up  25 first.</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. HUDSON:  2 Q. Right. But here what you're saying is  3 then you're then going and the next time you're  4 using a different product and then assigning it a  5 different product number so the inventory -- to  6 make the inventory count right. Did I understand  7 that right?  8 MR. KOBRIN: Object to form.  9 THE WITNESS: There's two objects here.  10 There's one object here. So I'm going to bill --  11 right now I've been using this up. This is the  12 old one. We just got this in. This is sitting  13 here brand new. So I'm filling a prescription for  14 two of these objects. I bill for two of this  15 particular product, not this one. I go over to  16 the shelf. I take this one away. Now the  17 computer doesn't know what I'm doing. It says  18 I've taken two of these. So what do I have? I  19 have minus five -- I have minus one.  20 BY MR. HUDSON:  21 Q. By why does the computer say --  22 A. Because every drug has an NDC number,  23 and we're billing that NDC number.  24 Q. So why not just use the one and one so  25 that what you're using is consistent with how you</p>



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1 created the inventory?

2 A. Because you can only bill one at a time.

3 So you bill one. Then you can bill the other one.

4 As you take them off the shelf, I'm down to minus

5 one. I've got two here. But I'm only handing you

6 the two that the doctor wrote. Now I have minus

7 five and one. But at the end of the day, I should

8 have one. I have one.

9 Q. Until those steps are taken to use some

10 other NDC code to then go and replace the one that

11 you took that wasn't in the system, there is a

12 discrepancy in the system; right?

13 MR. KOBRIN: Object to form.

14 THE WITNESS: In the system, but the

15 report -- this report is working exactly like we

16 want the report. We can say a hundred percent

17 that no one took five patches and put them in

18 their pocket. We have the correct number on the

19 shelf. There's a reason why. It's not just

20 unknown. They can tell you the script number.

21 They can look at the prescription. We know every

22 step of what happened.

23 BY MR. HUDSON:

24 Q. I guess I'm just confused why the need

25 to take one product and use that even though there

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1 was -- I agree in every case there's an NDC that

2 they're saying, well, you used this NDC instead of

3 that NDC. I guess I'm just confused as to why

4 there's a disconnect between what you can bill for

5 and what your inventory says.

6 MR. KOBRIN: Object to form.

7 THE WITNESS: I'm not sure what you're

8 asking. You can only bill for one product per

9 transaction. So we're billing -- especially if

10 you see two. At the time you couldn't even split

11 them up. So you only have one chance to bill one

12 product. We billed that product. We billed that

13 NDC number. And then you use what you've got on

14 the shelf until that was gone. Then you flip over

15 the order points, the new products. Then this

16 goes away next month because now we're using the

17 right stuff again.

18 BY MR. HUDSON:

19 Q. But that does create an audit

20 discrepancy in the short term or it doesn't?

21 MR. KOBRIN: Object to form.

22 THE WITNESS: It doesn't create an audit

23 discrepancy. We know what we're doing. We have a

24 reason why.

25

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1 BY MR. HUDSON:

2 Q. I understand that you're saying you

3 understand what you're doing. You have a reason

4 why. But it creates an audit discrepancy in that

5 it shows on this report, the purpose of which is

6 to audit inventory; is that fair?

7 MR. KOBRIN: Object to form.

8 THE WITNESS: No, it's not accurate.

9 BY MR. HUDSON:

10 Q. What is wrong with what I just said.

11 A. You're saying -- I can read the column

12 with you, discrepancy. But it's not really a

13 discrepancy because we've determined what the

14 discrepancy is. So it's a nonaction.

15 Now, I'm not saying that me might go into the

16 store during one of my audits, pop open and say,

17 okay -- I have this with me and say, they should

18 have ten on the shelf. I better make sure they

19 have them in there. And I might take a peek in

20 the safe just to make sure as a doublecheck.

21 That's how I use this report.

22 BY MR. HUDSON:

23 Q. That's what, I guess, I'm getting at.

24 Unless you physically go and look at the count,

25 you can't look at the inventory tracking system

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1 and determine whether it's right or not because

2 there's a discrepancy between what's being

3 reported and the physical inventory that exists.

4 And that's why it's popping up on this audit

5 discrepancy report; right?

6 MR. KOBRIN: Object to form.

7 Argumentative. Asked and answered. He's

8 testified about what he views as a discrepancy.

9 THE WITNESS: There's not a discrepancy

10 in inventory. There's a discrepancy -- there's a

11 discrepancy that's showing up on a particular NDC.

12 I'm not worried about the NDC. I'm worried about

13 this store should have ten fentanyl patches. I

14 don't care what the NDC is. If they have ten, the

15 inventory is on. If they have five, there's a

16 discrepancy. But there's no discrepancy here.

17 BY MR. HUDSON:

18 Q. And I guess all I'm trying to figure out

19 is in order to determine that there's ten fentanyl

20 patches, how do you go and do that?

21 MR. KOBRIN: Object to form.

22 BY MR. HUDSON:

23 Q. Do you look in the system or do you

24 physically go to the store and look and see how

25 many fentanyl patches there are?

<p style="text-align: right;">Page 114</p> <p>1 MR. KOBRIN: Object to form.</p> <p>2 THE WITNESS: You can physically go, but</p> <p>3 there's no reason to do that.</p> <p>4 BY MR. HUDSON:</p> <p>5 Q. Is the inventory system at Giant Eagle,</p> <p>6 is it organized and set up by NDC, or is it set up</p> <p>7 by fentanyl patches?</p> <p>8 MR. KOBRIN: Object to form.</p> <p>9 THE WITNESS: It's set up by both. We</p> <p>10 have five boxes of this NDC and we have two boxes</p> <p>11 of this NDC. When you pull up fentanyl patches,</p> <p>12 you can see all the different NDCs you have.</p> <p>13 BY MR. HUDSON:</p> <p>14 Q. But for this report, for one reason or</p> <p>15 the other, Giant Eagle set up a program that was</p> <p>16 flagging audit discrepancies by NDC number; is</p> <p>17 that fair?</p> <p>18 A. Yes.</p> <p>19 Q. And whether you agree or disagree with</p> <p>20 whether that's a good system or not, all I'm</p> <p>21 getting at is when you're using a product that has</p> <p>22 one NDC as opposed to another, that's creating a</p> <p>23 discrepancy that's popping up on this report.</p> <p>24 And I think, if I'm understanding your</p> <p>25 testimony right, what you're saying is while it's</p>	<p style="text-align: right;">Page 116</p> <p>1 more to add to it.</p> <p>2 BY MR. HUDSON:</p> <p>3 Q. If we turn to the next page then, page</p> <p>4 2, at the top do you see there for that</p> <p>5 hydrocodone combination product there were</p> <p>6 supposed to be 805 of that count, and there were</p> <p>7 only 801?</p> <p>8 A. Yes.</p> <p>9 Q. So that count is off by four; right?</p> <p>10 A. Yes.</p> <p>11 Q. Would you agree that that would be a</p> <p>12 problem?</p> <p>13 MR. KOBRIN: Object to form.</p> <p>14 THE WITNESS: You're asking for an</p> <p>15 opinion. It could be a miscount. It's not</p> <p>16 something we're going to -- when it becomes a</p> <p>17 problem is if every month I see minus two, minus</p> <p>18 three, if a trend starts forming.</p> <p>19 BY MR. HUDSON:</p> <p>20 Q. So something like this where the count</p> <p>21 would only be off by four and the reason given is</p> <p>22 "Unknown," would that be something that you would</p> <p>23 consider to be a problem?</p> <p>24 A. No, because I'm looking at what the</p> <p>25 headers are. This particular store purchased a</p>
<p style="text-align: right;">Page 115</p> <p>1 on this report, you don't view it as a true</p> <p>2 discrepancy because you have ways of confirming</p> <p>3 that, in fact, the product that's supposed to be</p> <p>4 there is there.</p> <p>5 MR. KOBRIN: Object to form.</p> <p>6 THE WITNESS: You were so close. I</p> <p>7 don't consider it a discrepancy because I have a</p> <p>8 reason why. I expect to have ten patches. I have</p> <p>9 ten patches.</p> <p>10 BY MR. HUDSON:</p> <p>11 Q. And all I'm saying is from the</p> <p>12 standpoint of this program, somebody at Giant</p> <p>13 Eagle decided they needed to have this program and</p> <p>14 they needed to have whatever column headings it</p> <p>15 has, and whoever decided that, you went with a</p> <p>16 program that does have a column that says</p> <p>17 discrepancy.</p> <p>18 And for any time the NDC number -- the counts</p> <p>19 are off by NDC numbers, those end up on this</p> <p>20 report as being a discrepancy.</p> <p>21 MR. KOBRIN: Object to form. Asked and</p> <p>22 answered. Misstates his testimony.</p> <p>23 BY MR. HUDSON:</p> <p>24 Q. Do you agree with that?</p> <p>25 A. I've explained it. I don't have any</p>	<p style="text-align: right;">Page 117</p> <p>1 thousand tablets, dispensed 614 of them. They're</p> <p>2 off by four. No, I don't consider that a problem</p> <p>3 for this month.</p> <p>4 Q. Why not?</p> <p>5 A. Because it could just be a miscount.</p> <p>6 Four could have got stuck in the tray, thrown</p> <p>7 away. There's nothing sticking out right now</p> <p>8 based on the quantities that they dispensed that</p> <p>9 month.</p> <p>10 Q. Go down four more line entries. Do you</p> <p>11 see the one with the oxycodone?</p> <p>12 A. Yes.</p> <p>13 Q. With the 90. So the expected count is</p> <p>14 90 and the actual count is zero, and the reason</p> <p>15 given is "Unknown." Would that be a problem to</p> <p>16 you?</p> <p>17 A. No. I'll tell you why. Because it</p> <p>18 doesn't say 90. It says minus 90. In other</p> <p>19 words, they dispensed them. They billed for them.</p> <p>20 Then we order them and we gave them to the guy.</p> <p>21 So now we have zero. The explanation should have</p> <p>22 been better. But any time we have more than we</p> <p>23 should have, I'm not concerned.</p> <p>24 Q. So here you're saying the expected would</p> <p>25 be minus 90, the actual is zero, and the</p>

<p style="text-align: right;">Page 118</p> <p>1 difference is 90?</p> <p>2 A. The difference is 90, correct, because</p> <p>3 what happened there is a prescription was brought</p> <p>4 in. We didn't have any. We had zero. We billed</p> <p>5 for the 90 tablets which brought us into the</p> <p>6 negatives. They happened to do the narcotic order</p> <p>7 that day. We're expecting minus 90.</p> <p>8 Now, they could have put in there we have</p> <p>9 minus 90, which technically we did because we</p> <p>10 already billed for it. But then the next day when</p> <p>11 the stuff comes in, we fill the prescription. Now</p> <p>12 we have ten. We probably got, I'm assuming, a</p> <p>13 bottle of a hundred.</p> <p>14 Q. So here even though the actual count is</p> <p>15 zero, you're saying you think there's an</p> <p>16 explanation there that would explain the</p> <p>17 discrepancy and it wouldn't raise an issue?</p> <p>18 MR. KOBRIN: Object to form. He didn't</p> <p>19 say he thinks. He explained the discrepancy.</p> <p>20 THE WITNESS: We were expecting minus</p> <p>21 and we have zero. So at the end of the day, we</p> <p>22 have zero.</p> <p>23 BY MR. HUDSON:</p> <p>24 Q. You turn back to page 5. Down the</p> <p>25 column do you see 1254 is the count, expected</p>	<p style="text-align: right;">Page 120</p> <p>1 store 4022 towards the bottom, and then I'm</p> <p>2 looking in particular at the fourth from the</p> <p>3 bottom. We've got an expected count of a hundred,</p> <p>4 an actual count of 80, so we're minus 20 of the</p> <p>5 hydrocodone product. And then in the description</p> <p>6 here it says "Not sure how these were lost,"</p> <p>7 question mark.</p> <p>8 A. Yeah.</p> <p>9 Q. Would that be a concern to you?</p> <p>10 A. To me that would be a concern because I</p> <p>11 don't like the -- I don't know how these were</p> <p>12 lost. So my recommendation would be to fill out</p> <p>13 the DEA 106, report it and then get -- we have a</p> <p>14 whole chain of things that happen when we think</p> <p>15 there's a loss.</p> <p>16 Q. Do you know whether or not this one was</p> <p>17 reported to the DEA as lost?</p> <p>18 MR. KOBRIN: Object to form.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 BY MR. HUDSON:</p> <p>21 Q. Let's look at the one right underneath</p> <p>22 it. It's another hydrocodone combination product.</p> <p>23 Expected count is 256. Actual count is 206.</p> <p>24 We're minus 50 here. And then the reason given is</p> <p>25 "Miscounts," question mark.</p>
<p style="text-align: right;">Page 119</p> <p>1 count?</p> <p>2 A. What store number are you looking at?</p> <p>3 Q. 1225.</p> <p>4 A. What was the number?</p> <p>5 Q. 1254.</p> <p>6 A. Okay.</p> <p>7 Q. And you see then the expected is 1254.</p> <p>8 The actual is 1239, so you're at minus 15.</p> <p>9 A. Yep.</p> <p>10 Q. And that's a hydrocodone combination</p> <p>11 product?</p> <p>12 A. Um-hum.</p> <p>13 Q. And the reason given or the explanation</p> <p>14 is "Unknown." Would that be a problem to you?</p> <p>15 A. No, because -- the only problem here is</p> <p>16 the reason. Have you ever seen that product?</p> <p>17 Q. I have not.</p> <p>18 A. It's a liquid. It's thick. It's mucus</p> <p>19 thick. So the chances of that being accurate, if</p> <p>20 it's stuck on the side -- they're guesstimating on</p> <p>21 there. I'm not concerned about a tablespoon of</p> <p>22 cough medicine. That's probably along the sides</p> <p>23 of the bottle somewhere. So again, it's not an</p> <p>24 issue.</p> <p>25 Q. Let's go to page 6 then. Here we've got</p>	<p style="text-align: right;">Page 121</p> <p>1 A. That never flies.</p> <p>2 Q. So this would be another problem?</p> <p>3 A. Yeah.</p> <p>4 Q. And would your expectation be that --</p> <p>5 A. It wouldn't be another problem. It</p> <p>6 would be the first problem that we talked about</p> <p>7 that's actually a problem now. That's a</p> <p>8 considerable amount of tablets.</p> <p>9 Q. So the 20 tablets in the line item right</p> <p>10 above?</p> <p>11 A. Yeah, these two.</p> <p>12 Q. That's all I meant when I said another.</p> <p>13 The first one is the line item where there was</p> <p>14 supposed to be a hundred and now there's 80. And</p> <p>15 then the next one is there was supposed to be 256</p> <p>16 and there's 206.</p> <p>17 Would you agree that both of those are</p> <p>18 problems?</p> <p>19 A. I would agree. Especially the second</p> <p>20 one is a problem.</p> <p>21 Q. Why would you say that especially the</p> <p>22 second one is a problem as opposed to the first?</p> <p>23 A. Again, this is how I do it. It's just</p> <p>24 that quantity.</p> <p>25 Q. Did you have in your mind if the</p>

<p style="text-align: right;">Page 122</p> <p>1 quantity was less than a certain amount, then it          2 probably wouldn't be a problem that would be          3 elevated?          4 A. No. I mean, I just go by the -- I'm          5 going to lose my train of thought here -- by I          6 think it's the DEA if it's a substantial loss. If          7 you fill 10,000 scripts or 10,000 tabs and you're          8 down two tabs, that's not substantial.          9 Q. So either one of these two --          10 MR. KOBRIN: Can I just have an          11 objection to the extent these two may or may not          12 be outside the jurisdiction? Can I have a          13 standing objection to the relevancy?          14 MR. HUDSON: Yes. You can have a          15 standing objection.          16 MR. KOBRIN: Well, as to the relevancy,          17 I'm not sure 4022 is inside or outside the          18 jurisdiction.          19 MR. HUDSON: I don't think you have to          20 make relevancy objections in depositions. I'll          21 give you a standing one.          22 BY MR. HUDSON:          23 Q. So for these two hydrocodone combination          24 products where the counts had discrepancies, would          25 you expect there to be DEA reports for one or both</p>	<p style="text-align: right;">Page 124</p> <p>1 now on store 5878. I'm down the tenth line item.          2 Here the expected count is 1048 and then the          3 actual count is 953. So the count is off by 95          4 for a hydrocodone combination product, and then          5 the discrepancy column has listed "Unknown."          6 A. Yes.          7 Q. Would that be another example of a          8 problem?          9 A. Yes.          10 Q. And would you expect there to have been          11 a DEA 106 submitted for this particular          12 discrepancy?          13 A. Yes.          14 Q. If we keep going down for the same store          15 5878, down close to about ten more line items, the          16 count is supposed to be 334 and it's 244. So that          17 count is off by 90 for another hydrocodone          18 combination product. Do you see that?          19 A. Yes.          20 Q. And there the discrepancy reason given          21 is "Unknown."          22 A. Yes.          23 Q. Is this another discrepancy that would          24 rise to the level of being reported?          25 A. It should be to the DEA.</p>
<p style="text-align: right;">Page 123</p> <p>1 of these?          2 A. I would expect.          3 Q. For both or only the second one?          4 A. I would expect both.          5 Q. Describe for me how that process would          6 work if there was a discrepancy like this. Who          7 within Giant Eagle would then submit that DEA          8 report?          9 A. The pharmacy manager submits the DEA 106          10 as soon as we suspect anything. We don't wait to          11 investigate it. It's submitted the day we find          12 it. There's a -- I believe Joe Millward made it.          13 There's an Ohio investigational form that has the          14 steps you need to fill out. It's a box. It's a          15 document with three boxes on it. Call the state          16 Board of Pharmacy. Called the state Board of          17 Pharmacy, check the box off. Do the 106. Fax it          18 in. We print it. George gets a copy. And it          19 stays open. We contact LP. Rick Shaheen they          20 come in and investigate.          21 Q. Either Giant Eagle or HBC, somewhere at          22 the company I'd probably be able to figure out how          23 many DEA 106s were submitted and when?          24 A. Yes.          25 Q. Let's keep moving back to page 15. I'm</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. To the DEA with the 106. And then if we          2 move down to page 16, we're on the last page of          3 the stores in your territory, here we've got the          4 very last line item for store 6414.          5 Do you see there's a hydrocodone combination          6 product, and the count was supposed to be 414 and          7 the actual count was 376, so it's off by 38?          8 A. Again, I'm going to the other column          9 there, because using the DEA's definition of          10 substantial, we used 2484 tablets and we're down          11 38. One could argue either way, that's          12 substantial or not substantial. They may have          13 erred and put it in or they may have not.          14 Q. Are you concerned that the reason given          15 here is "Unknown"?          16 A. Any time we see unknown is when I take a          17 little more -- I dig in a little more, maybe do a          18 store visit to see if there's some counting issues          19 or whatnot. But that usually gets a flag for me          20 when I see unknown.          21 Q. Would you say that this particular          22 report for June of 2013 would be normal or          23 abnormal?          24 MR. KOBRIN: Object to form.          25 THE WITNESS: You mean see all the</p>



<p style="text-align: right;">Page 126</p> <p>1 emails I get or this particular form?</p> <p>2 BY MR. HUDSON:</p> <p>3 Q. No, just meaning like this list, the</p> <p>4 line items, the number of line items, the issues</p> <p>5 being flagged, the sort of overall.</p> <p>6 If you look at your stores in your territory,</p> <p>7 is this about what you'd expect to see every</p> <p>8 month, or is this an abnormal report?</p> <p>9 We can look at this one, too, the other one</p> <p>10 we've got once you've finished.</p> <p>11 A. (Indecipherable) would fit about --</p> <p>12 let's make sure all the stores are listed. We're</p> <p>13 comparing to this one?</p> <p>14 Q. No. Just in general. What you can</p> <p>15 recall from this audit process, would you say that</p> <p>16 this report though, the audit from June of 2013,</p> <p>17 was pretty normal or in line with the other</p> <p>18 reports or abnormal?</p> <p>19 MR. KOBRIN: Object to form. During the</p> <p>20 entire period that he reviews these kinds of</p> <p>21 audits or all audits?</p> <p>22 MR. HUDSON: These particular reports.</p> <p>23 THE WITNESS: I can't say. We're</p> <p>24 talking 2013. I have fresh ones in my inbox with</p> <p>25 two lines on them.</p>	<p style="text-align: right;">Page 128</p> <p>1 Exhibit 12. And this looks to be the same exact</p> <p>2 type of report. It looks like it came from the</p> <p>3 same location on the F drive. The difference is</p> <p>4 this one is from October of 2013 whereas the first</p> <p>5 one was from July of 2013. So we're about --</p> <p>6 COUNSEL ON PHONE: Can we get a Bates</p> <p>7 number on Exhibit 12?</p> <p>8 MR. HUDSON: Sure. Exhibit 12 is</p> <p>9 HBC_MDL00032878. But it's another spreadsheet</p> <p>10 that's a thick document that's -- I don't know.</p> <p>11 It's not numbered. But it's probably greater than</p> <p>12 50 pages.</p> <p>13 BY MR. HUDSON:</p> <p>14 Q. So if we look at this particular report</p> <p>15 from Exhibit 12, on the second page, do you see</p> <p>16 this one is showing that it's an audit</p> <p>17 discrepancy. It's a narcotic audit chain</p> <p>18 discrepancy summary 10/1/2013 through 10/31/2013.</p> <p>19 A. Yes.</p> <p>20 Q. So this would be one that was looking at</p> <p>21 discrepancies from October of 2013, and it would</p> <p>22 be a report that was generated in early November.</p> <p>23 A. Okay.</p> <p>24 Q. Does that make sense?</p> <p>25 MR. KOBRIN: Object to form.</p>
<p style="text-align: right;">Page 127</p> <p>1 BY MR. HUDSON:</p> <p>2 Q. That's all I'm getting at, is do you</p> <p>3 feel like this was an abnormally -- because for</p> <p>4 the stores in your territory we've got 15 and a</p> <p>5 half pages of discrepancies; right?</p> <p>6 A. Um-hum.</p> <p>7 Q. And we went through and we found four or</p> <p>8 five discrepancies that rose to the level that you</p> <p>9 had indicated that those may need to be reported</p> <p>10 to the DEA with a 106.</p> <p>11 All I'm getting at is that in 2013 and 2014,</p> <p>12 2015, 2016, that kind of timeframe, would this be</p> <p>13 the report in terms of the number of line items</p> <p>14 and the issues that are being raised that would be</p> <p>15 pretty typical, or do you feel like in June of</p> <p>16 2013 there were more issues than normal?</p> <p>17 MR. KOBRIN: Object to form. Asked and</p> <p>18 answered.</p> <p>19 THE WITNESS: I'm not going to</p> <p>20 speculate. All I can tell you is looking at this</p> <p>21 report, this is what it is. I don't have any</p> <p>22 reports to look at to compare it to right now or</p> <p>23 recollection.</p> <p>24 BY MR. HUDSON:</p> <p>25 Q. Let's look then, if we could, at</p>	<p style="text-align: right;">Page 129</p> <p>1 THE WITNESS: Yeah. Again, the same</p> <p>2 answer as the last time. By the time this is</p> <p>3 generated, I've already seen --</p> <p>4 BY MR. HUDSON:</p> <p>5 Q. Right. Exactly. You beat me to the</p> <p>6 punch. So again, same deal, for the first -- it</p> <p>7 looks like your stores are listed here on the</p> <p>8 first -- let's count these -- 16, 15-2/3, so about</p> <p>9 16 pages again in this one.</p> <p>10 Again, for those particular stores, you would</p> <p>11 have received their individual reports to you</p> <p>12 broken down by store. So store 178 would have</p> <p>13 sent you their individual report. Store 203 would</p> <p>14 have sent you their individual report. You would</p> <p>15 have gotten each one of those separately?</p> <p>16 A. Right.</p> <p>17 Q. Here if we could take a look again,</p> <p>18 similar in terms of format, and then we've got the</p> <p>19 same discrepancies column here. And again, I just</p> <p>20 want to walk through this and see if there's -- if</p> <p>21 there are discrepancies that would rise to the</p> <p>22 level of being problems that arose from the</p> <p>23 October 2013 audit.</p> <p>24 So if we turn to page 3 of the exhibit, page</p> <p>25 2 of the spreadsheet there, where it shifts to</p>



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1 store 209 and then the second line item down on  
2 store 209, we've got a hydrocodone combination  
3 product where the expected count is 645 and the  
4 actual count is 523. So we've got a count that's  
5 off by 122.  
6 A. Um-hum.  
7 Q. And then in the explanation or  
8 discrepancies column, it says "Triple counted.  
9 Quantity equals 523." Would that be problematic  
10 to you?  
11 A. Yes.  
12 Q. And then if you look at the line item --  
13 before we leave that one, so for this one where  
14 the count was off by 122, would that be a  
15 discrepancy that you would expect to be reported  
16 with a DEA 106?  
17 A. The one we just talked about, the minus  
18 122 one?  
19 Q. Yes.  
20 A. Yes.  
21 Q. And then underneath it, we've got a  
22 count for another hydrocodone combination product  
23 where we've got a count of -- expected count of  
24 392, an actual count of 391. So you're off by one  
25 there it looks like.

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1 A. Correct.  
2 Q. Would that be a concern?  
3 A. No.  
4 Q. If we move back to -- so now I'm going  
5 to go back two more pages. So I'm now on store  
6 465. And I'm on the fourth one down where you've  
7 got the Oxy there.  
8 A. Yeah.  
9 Q. You got an expected count of 113, an  
10 actual count of 23. So it's minus 90. And in the  
11 discrepancy it says "201766 not counted on the  
12 sheet," question mark, question mark, question  
13 mark.  
14 MR. KOBRIN: Object to form.  
15 BY MR. HUDSON:  
16 Q. Does that make sense?  
17 A. Yes.  
18 Q. What does that mean?  
19 A. Remember, this report is generated off  
20 things that we've purchased and things we've  
21 dispensed. For some reason, when he ran this  
22 dispensing, it says we should have, you already  
23 read it, 113. He counts them. We have 23. So  
24 his next thing is start an investigation on what  
25 happens. He's down 90.

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1 So he starts looking at all his dispensings  
2 on the report that was generated. For some  
3 reason, prescription number 2017666 was written  
4 for 90. It wasn't on that report.  
5 Q. Got it. So he's giving a probable  
6 explanation for what happened here?  
7 MR. KOBRIN: Object to form.  
8 THE WITNESS: He's giving the reason  
9 what happened. That 90 wasn't on the report.  
10 BY MR. HUDSON:  
11 Q. I would say he's giving the reason.  
12 Only he put three question marks next to what he  
13 wrote; right?  
14 A. Correct. He's questioning why it's not  
15 on there.  
16 Q. Right. In other words, he's saying,  
17 look, I think what happened is 2017666 not counted  
18 on the sheet, question mark, question mark,  
19 question mark; right?  
20 MR. KOBRIN: Object to form.  
21 THE WITNESS: He's saying I know what  
22 happened. We're missing -- we're down 90. I  
23 found the 90. That's the way it works.  
24 BY MR. HUDSON:  
25 Q. I understand. I just don't know why he

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1 would add three question marks after that.  
2 MR. KOBRIN: Object to form.  
3 THE WITNESS: We looked at emails with  
4 16 question marks. I don't know why they do it.  
5 BY MR. HUDSON:  
6 Q. Fair enough. I didn't write this stuff.  
7 We're just going through it.  
8 So we go up to two line items here. The  
9 first one and the second one are a couple of  
10 hydrocodone combination products. It looks like  
11 we've got a count that's off by three for the  
12 first one with the description of "Unknown" and  
13 then a count that's off by nine for the second one  
14 and it says minus nine outdated.  
15 Would either one of those be problematic to  
16 you?  
17 A. No, for the same reason. The first one  
18 is only three tablets on dispenses of 981. There  
19 could be a miscount.  
20 On the second one, he actually accounts for  
21 it. We have nine tablets that are sitting  
22 quarantined to be returned. We took them out of  
23 the system already.  
24 Q. Outdated, that's like a term of art.  
25 You know what that means. That would explain

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1 that.

2 How about if we go down to the sixth line

3 item there. Do you see the hydrocodone

4 combination product where the expected count is

5 521 and the actual count is 493. We've got 28

6 that aren't accounted for, and the reason or the

7 discrepancy is "Unknown." Would that be a

8 problem?

9 A. Based on the way I do it, yes. There's

10 got to be a reason. It can't just be unknown.

11 Q. So would you expect there to be a DEA

12 106 reported for that discrepancy?

13 A. I would expect there would be one, yeah.

14 MR. KOBRIN: Can we take a break? Do

15 you want to take a break.

16 THE WITNESS: Yeah.

17 BY MR. HUDSON:

18 Q. Can we just finish this? I'm almost

19 done.

20 MR. KOBRIN: Yeah. How many more

21 questions do you think you have?

22 MR. HUDSON: Just going through, there's

23 probably like, I don't know, six more. They're

24 just going to be the same questions every one.

25 MR. KOBRIN: Why don't we just take a

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1 quick break.

2 MR. HUDSON: Okay. We'll take a break.

3 THE VIDEOGRAPHER: We're going off the

4 record. The time is 5:29 p.m.

5 (Recess from 5:29 p.m. to 5:51 p.m.)

6 THE VIDEOGRAPHER: We're going back on

7 the record. The time is 5:51 p.m.

8 BY MR. HUDSON:

9 Q. Mr. Bencivengo, before the break, we

10 were talking about this audit report from October

11 of 2013, and we are on page 5 of the exhibit,

12 which is page 4 of the spreadsheet.

13 The particular line item, there's a

14 hydrocodone product for store 465, and the

15 expected count is 521 and the actual count is 429.

16 That count was off by 28 with the reason given as

17 "Unknown"; correct?

18 A. Correct.

19 Q. And in your mind, would that be a

20 problem?

21 A. Looking at dispensing 3900 tablets of

22 it, I would probably say no.

23 Q. If we look at the next page of this

24 exhibit and we go down to the bottom, for store

25 4022, four line items from the bottom, the

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1 expected count is 470 and the actual count is 382.

2 So this time we're off by 88 for a hydrocodone

3 combination product with the reason given as

4 "Unknown loss."

5 Would that create a problem in your mind?

6 A. It's a reportable issue.

7 Q. And by that do you mean a DEA 106

8 report?

9 A. Yes.

10 Q. If we go to the next page, I'm down

11 under store 4031 about eight from the bottom. The

12 expected count was 36. The actual count was zero.

13 And the explanation given is "liquid incorrect

14 measurement."

15 Would that make sense that that would cause

16 the count to be off by 36?

17 A. Yeah. And that's that same liquid we

18 spoke about, a very thick viscous liquid. You're

19 basically doing a guesstimate. There's nothing to

20 measure on the bottle. You're not pouring it.

21 You're doing this (indicating) and kind of giving

22 your best assumption. So that's not an issue.

23 Q. You can say definitively you think that

24 one would not be an issue?

25 A. Yeah.

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1 Q. If we go down to the bottom, the last

2 one here, again another hydrocodone combination

3 product at store 4031. The expected count is 160.

4 The actual count is a hundred. So we're 60 off.

5 And the reason given is "Did not dispense any.

6 Did not receive any. Missing 60 tablets."

7 Would that be a problem?

8 A. That would be something that I would

9 assume we would report to the DEA 106.

10 Q. If we go to the next page, here for

11 store -- now I'm moving to store 3042. And midway

12 down the page here, we've got a count where the

13 expected count is 20. The actual is zero. So

14 we're off by 20 with an explanation of "Unknown."

15 Then right underneath that we've got another

16 hydrocodone product there where the expected count

17 was minus 1. The actual count is zero. So it

18 looks like we're off by one with the reason given

19 as "Unknown."

20 Would either one of those be problematic?

21 A. No. That first one is that liquid. So

22 we're basically talking about a tablespoon again,

23 a little over a tablespoon of missing liquid we

24 can't account for. And the second one, she's

25 actually over in tablets. She's over one, not

<p style="text-align: right;">Page 138</p> <p>1 under.</p> <p>2 Q. So situations where the count is wrong</p> <p>3 because they're over would not be something that</p> <p>4 would raise a problem or a concern?</p> <p>5 A. No, no.</p> <p>6 Q. If we keep back going back, now I'm back</p> <p>7 to store 4152. It looks like two-thirds of the</p> <p>8 way down there's an expected count of 213 and an</p> <p>9 actual count of 223. So we're off by 10 to the</p> <p>10 positive. Then it says "Unknown."</p> <p>11 MR. KOBRIN: What page are you on?</p> <p>12 MR. HUDSON: They're not numbered.</p> <p>13 Store 4152. The top is 4124. So then it fades</p> <p>14 into 4152. So we're down the last -- it's the</p> <p>15 last line item for that store 4152. We've got</p> <p>16 hydrocodone combination product, expected count of</p> <p>17 213, actual count of 223. You're off by ten to</p> <p>18 the positive, but the reason given is</p> <p>19 "Unknown..possible misconduct," question mark,</p> <p>20 question mark.</p> <p>21 When the count is positive like that, would</p> <p>22 that be a potential problem?</p> <p>23 MR. KOBRIN: Object to form. I think</p> <p>24 you misread the used for balance explanation.</p> <p>25 MR. HUDSON: You're right. I did.</p>	<p style="text-align: right;">Page 140</p> <p>1 5839, Focalin, do you see that line item?</p> <p>2 A. Yeah.</p> <p>3 Q. It's about eight down. Expected count</p> <p>4 of 198, actual count of 138. So 60 are missing.</p> <p>5 What is Focalin?</p> <p>6 A. It's another form of Ritalin.</p> <p>7 Q. And then here the discrepancy</p> <p>8 explanation is "I don't feel comfortable on this</p> <p>9 one. Still searching, but no explanation on minus</p> <p>10 60. Only 30 dispensed last period and never had</p> <p>11 discrepancy before."</p> <p>12 MR. KOBRIN: Object to form.</p> <p>13 BY MR. HUDSON:</p> <p>14 Q. Would that be a potential reportable</p> <p>15 event?</p> <p>16 A. Yeah. We probably should fill out a 106</p> <p>17 based on the dispensing and watch it next month.</p> <p>18 Q. If you go on down, so I'm still --</p> <p>19 actually I'm not. Now I'm on store 5863. And</p> <p>20 there's a hydrocodone combination product with an</p> <p>21 expected count of 853 and an actual count of 796.</p> <p>22 A. You said 5863?</p> <p>23 Q. I'm sorry. Expected count of 853,</p> <p>24 actual count of 796.</p> <p>25 MR. KOBRIN: Object to form. He's</p>
<p style="text-align: right;">Page 139</p> <p>1 "Unknown..possible miscount," question mark,</p> <p>2 question mark. Thank you.</p> <p>3 BY MR. HUDSON:</p> <p>4 Q. Would that be a potential problem?</p> <p>5 A. No. It probably was somebody got</p> <p>6 shorted.</p> <p>7 Q. If we go to the next page, third from</p> <p>8 the bottom, first line item for store 5830, we've</p> <p>9 got morphine, expected count of 20, actual count</p> <p>10 of zero, so we're minus 20. "Unable to find.</p> <p>11 Previous pharmacist never counted bottles and</p> <p>12 submitted improperly. Will continue to look on</p> <p>13 shelves as day progresses."</p> <p>14 Would that be an issue?</p> <p>15 A. It was an operational issue, yeah, for</p> <p>16 the reason given.</p> <p>17 Q. Would that be a reportable event?</p> <p>18 A. It should be.</p> <p>19 Q. So that would be another DEA 106 issue</p> <p>20 if you couldn't find the morphine that was</p> <p>21 missing?</p> <p>22 A. That would be the appropriate thing to</p> <p>23 do; correct.</p> <p>24 Q. If you go to the -- nothing on the next</p> <p>25 page. We go to the next one after that. Store</p>	<p style="text-align: right;">Page 141</p> <p>1 asking you about the store, I think.</p> <p>2 BY MR. HUDSON:</p> <p>3 Q. The store is 5863. The expected count</p> <p>4 on the hydrocodone combination product is 853.</p> <p>5 The actual count is 796. So it's off by 57. And</p> <p>6 the discrepancy says "Possibly miscount since</p> <p>7 8/4/13 audit."</p> <p>8 Would that be a problem?</p> <p>9 A. 10,772 tablets, probably a couple</p> <p>10 different generics on that one. That one seems to</p> <p>11 be standing out. So that would probably just be</p> <p>12 put on something we'd watch.</p> <p>13 Q. If you look to the next one right</p> <p>14 underneath that, now we're at store 5878. What is</p> <p>15 that product, methyphenid?</p> <p>16 A. Ritalin generic.</p> <p>17 Q. We've got generic Ritalin, expected</p> <p>18 count of 110, actual count of 80. We're off by 30</p> <p>19 and the reason given is "Unknown."</p> <p>20 A. Yeah. It's going to be something we</p> <p>21 should report to the DEA on the form. It looks</p> <p>22 like -- because it's an even 30, it's probably one</p> <p>23 of those situations -- I'm not going to assume</p> <p>24 what it was.</p> <p>25 Q. That would be a reportable event?</p>

<p style="text-align: right;">Page 142</p> <p>1 A. Um-hum.</p> <p>2 Q. If you go to the last one on this page</p> <p>3 for store 5878, what is that product, dexmethyl?</p> <p>4 A. It's the same. It's an upper, same</p> <p>5 class.</p> <p>6 Q. And then there it looks like the count</p> <p>7 is missing by 45, expected 144, actual 99. And</p> <p>8 again, reason given is "Unknown."</p> <p>9 Would that be another discrepancy that would</p> <p>10 be a problem?</p> <p>11 A. It would be a reportable issue to look</p> <p>12 into; correct.</p> <p>13 Q. Then if we turn to the next page at the</p> <p>14 top, the first entry we have another hydrocodone</p> <p>15 combination product. The expected count is 1332.</p> <p>16 The actual is 1233. So the count is short 99, and</p> <p>17 the reason given is "Unknown."</p> <p>18 A. Yes.</p> <p>19 Q. Would that be a problem for store 5878?</p> <p>20 A. Same answer. It would be reported and</p> <p>21 looked into.</p> <p>22 Q. And then about for the line item right</p> <p>23 underneath it, which is another hydrocodone</p> <p>24 combination product, it looks like there that the</p> <p>25 count is off by 58. There's 58 tablets missing.</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. HUDSON:</p> <p>2 Q. Ever, if you know.</p> <p>3 A. I don't know. I don't fill them out. I</p> <p>4 recommend to fill them out.</p> <p>5 Q. Do you know if for any of the line items</p> <p>6 that we've talked through on Exhibits 11 and 12</p> <p>7 whether there were any DEA reports, 106 reports</p> <p>8 filed for any of these items?</p> <p>9 A. That's the procedure. So, yes, they</p> <p>10 should have been done.</p> <p>11 Q. Right. I understand. You've testified</p> <p>12 and explained and sort of walked through and said</p> <p>13 yes or no on whether a DEA 106 form should have</p> <p>14 been filed.</p> <p>15 My question is just: Do you know whether any</p> <p>16 DEA 106 reports were actually filed?</p> <p>17 MR. KOBRIN: Do you have anything to</p> <p>18 show him or anything to refresh him on this?</p> <p>19 MR. HUDSON: I don't.</p> <p>20 MR. KOBRIN: And this is in 2013? All</p> <p>21 the ones you're referring to are in 2013?</p> <p>22 THE WITNESS: I don't know. That's the</p> <p>23 procedure.</p> <p>24 BY MR. HUDSON:</p> <p>25 Q. And consistent with that procedure, it</p>
<p style="text-align: right;">Page 143</p> <p>1 The reason given is "Unknown."</p> <p>2 A. Yeah. At that volume, that's a great</p> <p>3 one. I'm not sure if that was reported or not</p> <p>4 because of the tablets dispensed and the</p> <p>5 definition by the DEA.</p> <p>6 Q. So 58 tablets missing?</p> <p>7 A. Out of 3000.</p> <p>8 Q. Would be a close call?</p> <p>9 A. Yeah.</p> <p>10 Q. If we go down then to the sixth line</p> <p>11 item, morphine, do you see the count was supposed</p> <p>12 to be 270, and it's 185. So we've got 85 missing.</p> <p>13 And the reason given is "Unknown."</p> <p>14 MR. KOBRIN: Object to form.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. HUDSON:</p> <p>17 Q. Would that be a problem?</p> <p>18 A. It would be reported on the 106, should</p> <p>19 be.</p> <p>20 Q. How many DEA 106 reports to your</p> <p>21 knowledge has Giant Eagle filed for stores in your</p> <p>22 territory?</p> <p>23 MR. KOBRIN: Object to form. Do you</p> <p>24 have a time period?</p> <p>25</p>	<p style="text-align: right;">Page 145</p> <p>1 would be the pharmacist at the store that you</p> <p>2 would expect to have filed the DEA 106s?</p> <p>3 A. Correct.</p> <p>4 Q. Now having looked at two of these</p> <p>5 reports, one from June and one from October of</p> <p>6 2013, do you have any greater sense of whether or</p> <p>7 not these sorts of discrepancies were typical in</p> <p>8 the 2013, 2014 timeframe, or whether or not these</p> <p>9 two reports had more issues than the other reports</p> <p>10 in terms of what you can remember?</p> <p>11 MR. KOBRIN: Object to form.</p> <p>12 THE WITNESS: I can't -- we're</p> <p>13 comparing -- all I can compare is the two things</p> <p>14 you just handed me.</p> <p>15 BY MR. HUDSON:</p> <p>16 Q. You've got no frame of reference beyond</p> <p>17 looking at these two?</p> <p>18 A. I have an email from today. One store</p> <p>19 has two line items on it.</p> <p>20 Q. So it's fair to say that today, you can</p> <p>21 say confidently that the number of discrepancies</p> <p>22 is far less than what we've looked at in</p> <p>23 Exhibits 11 and 12?</p> <p>24 MR. KOBRIN: Object to form. Vague.</p> <p>25 THE WITNESS: It is vague. If I compare</p>



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1 the store in my email to one of these stores, yes,  
2 it's lower today.  
3 BY MR. HUDSON:  
4 Q. All I'm saying is Exhibits 11 and 12,  
5 we've got 15 pages of line items for stores that  
6 are in your territory; right?  
7 A. Correct.  
8 Q. And then today what you're saying is if  
9 we went and looked at that report, it would be a  
10 page or less; right?  
11 A. Correct.  
12 Q. Were you surprised to see as many issues  
13 as there were on these reports and in particular  
14 relating to hydrocodone combination products?  
15 MR. KOBRIN: Object to form.  
16 THE WITNESS: Just for some operational  
17 stuff we do with our reporting, I'm not surprised.  
18 I'm confident most of this stuff is accounted for  
19 just through errors. It's not on the street  
20 somewhere. We didn't lose it or sell it. It's  
21 accounted for. I mean, you see from these reports  
22 we capture every little thing here.  
23 BY MR. HUDSON:  
24 Q. The pharmacists who are filling out  
25 these reports did their very best to try to

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1 provide explanations for why these discrepancies  
2 existed; right?  
3 MR. KOBRIN: Object to form regarding  
4 discrepancies.  
5 THE WITNESS: Yeah. That's the purpose  
6 of the form, to capture anything, to itemize it,  
7 to research it.  
8 BY MR. HUDSON:  
9 Q. So if there was an explanation for  
10 discrepancies that existed, you would expect them  
11 to be put in this audit report in the column that  
12 says discrepancy; right?  
13 A. Yeah.  
14 MR. KOBRIN: Object to form.  
15 BY MR. HUDSON:  
16 Q. So were you surprised the number of line  
17 items that we walked through where the description  
18 was unknown?  
19 A. Not really.  
20 Q. Was that pretty typical to have that  
21 many discrepancies with an unknown explanation?  
22 MR. KOBRIN: Object to form.  
23 Argumentative.  
24 THE WITNESS: It's typical to the report  
25 we looked at here today.

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1 BY MR. HUDSON:  
2 Q. Typical for the two reports that we  
3 looked at, right, from 2013?  
4 A. Yes.  
5 Q. We went through and saw, I don't know,  
6 20 or so items at least from these two months  
7 where there were hydrocodone combination products  
8 that had been missing and the reason given was  
9 "Unknown"; right?  
10 A. Well, yeah, but out of how many? 20 out  
11 of all these? 20 out of 17 pages.  
12 Q. There's 16 pages of line items with  
13 discrepancies. All I'm getting at is --  
14 A. It wasn't all hydrocodone though. We  
15 looked at Ritalin. You looked at other things  
16 besides hydrocodone.  
17 Q. Sure. But I'm just saying we've looked  
18 at hydrocodone line item entries, and there were  
19 probably 20 of them or so where the reason given  
20 for the discrepancy was "Unknown."  
21 MR. KOBRIN: Object to form. If we know  
22 how many there are, we should say how many there  
23 are.  
24 THE WITNESS: We looked at hydrocodone  
25 along with Focalin and Ritalin and things like

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1 that. I didn't count them.  
2 BY MR. HUDSON:  
3 Q. I guess all I'm getting at is one of the  
4 contentions made in this case is that Giant Eagle  
5 had inventory processes and controls in place that  
6 would catch any errors.  
7 Can you agree that these reports raise real  
8 questions about whether or not the inventory  
9 system was counting all of the errors that existed  
10 at Giant Eagle retail pharmacies?  
11 MR. KOBRIN: Object to form.  
12 THE WITNESS: I can't agree with that.  
13 I think the reports are doing what it's supposed  
14 to do.  
15 BY MR. HUDSON:  
16 Q. As you sit here today, can you say under  
17 oath whether or not Giant Eagle retail pharmacies  
18 ever figured out what the cause of the  
19 discrepancies were when the reason given was  
20 unknown?  
21 MR. KOBRIN: Object to form. It's not  
22 appropriate on so many levels. He said that they  
23 would either fill out a 106 or they would  
24 investigate it, but to try and --  
25 MR. HUDSON: He said they were supposed



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1 to, Josh. Please don't testify.  
2 MR. KOBRIN: -- about a report five  
3 years ago is ridiculous.  
4 THE WITNESS: Under oath I can say that,  
5 yes, we did figure out some.  
6 BY MR. HUDSON:  
7 Q. And as you sit here today, do you have  
8 any idea which ones you did or which ones you  
9 didn't?  
10 A. No.  
11 Q. And is there any sort of tracking form  
12 or log that I could look at to try to figure out  
13 which of these issues were resolved and which ones  
14 remained unresolved or unknown?  
15 MR. KOBRIN: Object to form.  
16 THE WITNESS: I would check with Lynne  
17 Kolas or George Chunderlik.  
18 BY MR. HUDSON:  
19 Q. To your knowledge, you're not aware of  
20 any log?  
21 A. No.  
22 Q. So once you get these audit reports,  
23 there isn't a further report of some kind that's  
24 created by Giant Eagle that would then track open  
25 discrepancies that would then give us a report of

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1 what ultimately happened with any investigations  
2 on these items?  
3 MR. KOBRIN: Object to form. He said  
4 what happens. Ask him to repeat it.  
5 THE WITNESS: I don't see the report. I  
6 discussed previously that when there's a loss, we  
7 file a 106. If we think there's a loss, there's  
8 an investigational form I mentioned with three  
9 boxes on it that gets faxed in the office. It  
10 sits open while we investigate with LP.  
11 A period of time goes by. If no one  
12 responds, then Lynne Kolas will send it back to  
13 the store and say whatever happened here. Oh, we  
14 found it. It was in the trash. We close it out.  
15 Or we've looked. It's lost. We can't find it.  
16 It doesn't mean -- it might have gotten thrown  
17 away. It might have been an error. But they're  
18 all closed out eventually. They don't just kind  
19 of sit there kind of hanging out.  
20 BY MR. HUDSON:  
21 Q. So where would I go to look to figure  
22 out as a result of these audit reports which  
23 issues there was further paperwork filled out and  
24 then ultimately what happened with those  
25 discrepancies?

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1 MR. KOBRIN: Object to form.  
2 THE WITNESS: Only if we suspected a  
3 loss that we were concerned about that we would  
4 open up one of those tabs. So Lynne Kolas would  
5 be the person to ask.  
6 BY MR. HUDSON:  
7 Q. Do you know the locations those would be  
8 to try to figure out what came of those issues?  
9 A. No.  
10 Q. And I know you've said this, so I'm  
11 repeating myself. I just need to make sure the  
12 record is clear.  
13 As you sit here today, for any one of these  
14 line items, you don't know what actually happened  
15 in terms of further paperwork filled out by  
16 anybody at Giant Eagle relating to any of these  
17 particular line items?  
18 MR. KOBRIN: Object to form.  
19 BY MR. HUDSON:  
20 Q. Is that fair?  
21 MR. KOBRIN: Object to form.  
22 THE WITNESS: It's not accurate. We  
23 have a procedure in place. I can't sit here and  
24 say under oath that it was followed a hundred  
25 percent of the times, but we have a procedure in

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1 place. If one of these show up as unknown,  
2 there's actions that are taken.  
3 BY MR. HUDSON:  
4 Q. Right. That's why I was trying to get a  
5 sense of, if you had any sort of idea how many  
6 times DEA 106 reports had been filled out, like to  
7 give some sense of -- I'm just trying to gauge  
8 whether you have any understanding of whether or  
9 not the procedures that were supposed to be  
10 followed were followed for each of the line items  
11 that are on each of these reports.  
12 MR. KOBRIN: Object to form.  
13 THE WITNESS: If they followed  
14 procedure, then they were followed. I don't have  
15 any reports. I have no reporting that comes to me  
16 that says these ten stores submitted DEA 106s. I  
17 don't have any access to those reports.  
18 BY MR. HUDSON:  
19 Q. That's what I'm trying to get at, is  
20 what you have personal knowledge about. Do you  
21 have personal knowledge to know whether or not for  
22 these particular line items on these reports the  
23 procedures were followed?  
24 MR. KOBRIN: Object to form. You're  
25 asking him his personal knowledge about particular

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1 line items in a report that he's never seen before  
2 today that's several years old; is that accurate?  
3 MR. HUDSON: Well, we've got to go back  
4 and reestablish the foundation.  
5 BY MR. HUDSON:  
6 Q. Mr. Bencivengo, you testified before for  
7 the line items that related to the stores where  
8 you're a specialist, you would have received the  
9 reports in substantially the same form, but they  
10 would have come from each store each month;  
11 correct?  
12 A. Correct.  
13 Q. So then once you get those line item  
14 reports, my question is: For those where there  
15 are still open issues and there's discrepancies  
16 and the reason given is unknown, do you, as you  
17 sit here today, have any personal knowledge about  
18 whether Giant Eagle followed its procedures and  
19 then filled out any paperwork to then go and  
20 follow up on those discrepancies?  
21 MR. KOBRIN: Object to form.  
22 THE WITNESS: Yes. If and only if it  
23 was determined that it was a substantial loss and  
24 we should start the process. If I'm down one  
25 tablet out of 10,000, nothing happened.

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1 BY MR. HUDSON:  
2 Q. Right. So in those instances on these  
3 line items where it was determined that there  
4 would be a substantial loss, do you as you're  
5 sitting here today have any personal knowledge  
6 about whether or not anyone from Giant Eagle then  
7 followed up and followed the procedure and filled  
8 out paperwork to report those issues?  
9 MR. KOBRIN: Object to form.  
10 THE WITNESS: Yes. We went through that  
11 procedure already.  
12 BY MR. HUDSON:  
13 Q. Right. I know. And you've said you  
14 expected the paperwork to be filled out; correct?  
15 A. Correct.  
16 Q. All I'm doing is I just want to make  
17 sure that I've exhausted what you actually know in  
18 your head.  
19 Do you know, as you sit here today, whether  
20 any paperwork for any of these items was, in fact,  
21 actually filled out?  
22 In other words, were you personally involved  
23 in the process? Did you hear that it got filed?  
24 Did anybody report back to you in any way, shape  
25 or form? Do you know whether or not for the line

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1 items we've talked about whether or not anybody  
2 actually went and filed the paperwork?  
3 MR. KOBRIN: Object to form.  
4 THE WITNESS: I can't tell you from six  
5 years ago whether it happened or not. I know it  
6 happens. I know what the procedure is. I can't  
7 remember in 2013 if someone filled one out.  
8 I completely understand. That's all I'm  
9 asking, is the best of your recollection. That's  
10 all you can do.  
11 MR. HUDSON: I don't have any further  
12 questions.  
13 MR. KOBRIN: Let's go off the record  
14 real quick.  
15 THE VIDEOGRAPHER: We're going off the  
16 record. The time is 6:15 p.m.  
17 (Recess from 6:15 p.m. to 6:34 p.m.)  
18 THE VIDEOGRAPHER: We're going back on  
19 the record. The time is 6:34 p.m.  
20 EXAMINATION  
21 BY MR. KOBRIN:  
22 Q. Mr. Bencivengo, earlier today in your  
23 testimony you talked about opioid usage and  
24 scripts going up and down in the past. I think  
25 you said that you thought they might have started

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1 going down around 2014. Do you recall that  
2 testimony?  
3 A. Yes.  
4 Q. On what did you base that testimony?  
5 A. Just on my readings and continuing  
6 education, journals outside of Giant Eagle.  
7 Q. So that wasn't based on any Giant Eagle  
8 data?  
9 A. No.  
10 Q. What kind of Giant Eagle data did you  
11 get? Did you not get specific opioid data  
12 concerning opioid use?  
13 A. The only data I get weekly is the Mono  
14 scripts that my 32 stores fill. It's a  
15 conglomeration of every script we fill.  
16 Q. It's not broken out?  
17 A. It's not broken out. The only thing we  
18 break out is flu shots.  
19 Q. We talked about licensed doctors who had  
20 caused some concerns for pharmacists in the  
21 pharmacies you oversee as a PDL. Do you recall  
22 that testimony?  
23 A. Yes.  
24 Q. And opposing counsel asked you lots of  
25 questions about whether you refused scripts from

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1 those doctors as a matter of policy or how you  
 2 kept track of those doctors or which scripts were  
 3 refused. Do you recall that?  
 4 A. Yes.  
 5 Q. If a doctor was identified as a licensed  
 6 doctor who was causing concern for pharmacists,  
 7 what steps would your pharmacists take in your  
 8 pharmacies?  
 9 A. Well, I think, for the most part, you go  
 10 in the stores and see a doctor's name on a cork  
 11 board, taped to a monitor so that anybody that  
 12 comes in there is aware that we're not not filling  
 13 all scripts from this doctor, but we're going to  
 14 scrutinize and drag that prescription through the  
 15 mud as much as possible to make sure it's for a  
 16 legitimate purpose.  
 17 A guy comes in. It's after the hours. We  
 18 can't get ahold of the doctor. It's not getting  
 19 filled. What we normally do after that is send an  
 20 email out at times or call the local stores and  
 21 say we just turned this guy away and this is the  
 22 reason. It goes out to the stores. I've had  
 23 times or I've heard of times where other stores,  
 24 CVS, has called us. If we have a store across the  
 25 street, a competitor, we may call the competitor

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1 and say, you know what, we just sent this guy  
 2 there with a script. He took it back. He may be  
 3 coming over to you now and this is why. But  
 4 they're in the same area, so they have all the  
 5 same docs anyway.  
 6 Q. So even if the person with a script from  
 7 the doctor who's kind of identified by the  
 8 pharmacy, even if that particular person bringing  
 9 that particular script in didn't raise any red  
 10 flags, you would still scrutinize that script?  
 11 MR. HUDSON: Object to the form.  
 12 BY MR. KOBRIN:  
 13 Q. Would you still scrutinize the script  
 14 even if the patient bringing in the script from a  
 15 doctor who had caused some concern for your  
 16 pharmacists? Would you still scrutinize it even  
 17 if there were no red flags?  
 18 MR. HUDSON: Object to the form.  
 19 THE WITNESS: If it's from that doctor,  
 20 is that what you're asking?  
 21 BY MR. KOBRIN:  
 22 Q. Yes.  
 23 A. We would scrutinize it.  
 24 Q. How would you scrutinize it?  
 25 A. Reading the OARRS report, calling for

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1 the diagnosis whether he wants to give it to us or  
 2 not, and only filling it during his business  
 3 hours. And if you can't get ahold of him to  
 4 verify that he even wrote the script, then we  
 5 would either give it back or -- it all depends.  
 6 There's two options. We'll call the doctor  
 7 in the morning for you. Come back and get it. Or  
 8 the guy might say, no, just give it to me. Then  
 9 we would try to call CVS or send an email out and  
 10 warn we just gave the script back. This is why.  
 11 Q. You said that anyone who comes in can  
 12 see the name on the cork board. By that do you  
 13 mean anyone, customers?  
 14 A. No. It's back in the pharmacy facing  
 15 us.  
 16 Q. So everyone at the store would know to  
 17 scrutinize this doctor's script?  
 18 A. The pharmacists, yes.  
 19 Q. We talked earlier in relation to your  
 20 testimony about doctors who were licensed but  
 21 still caused some concern to your pharmacists  
 22 about rejecting scripts. Do you recall that?  
 23 A. Yes.  
 24 Q. And I know you said that you were -- I  
 25 believe your testimony was that you were a hundred

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1 percent certain that it happened and the scripts  
 2 were rejected, but you couldn't give an exact  
 3 description of when that happened. Do you recall  
 4 that?  
 5 A. Yes.  
 6 Q. Is that accurate?  
 7 A. It's an inexact number. I would say  
 8 that it happens weekly for the main reason, which  
 9 hasn't changed, is they always need it two or  
 10 three days early, early, early. So you start  
 11 billing. It comes back too soon. You look at the  
 12 OARRS report. You see the last time it was  
 13 filled, and we don't fill it.  
 14 Q. So it did happen regularly, we'll say,  
 15 that scripts were rejected at the pharmacy that  
 16 you oversaw?  
 17 A. Correct.  
 18 MR. HUDSON: Object to the form.  
 19 BY MR. KOBRIN:  
 20 Q. Did it happen regularly?  
 21 A. Yes.  
 22 Q. You testified a little bit about  
 23 thresholds and the thresholds, whether they be  
 24 from McKesson or Anda or HBC. Do you remember  
 25 that?

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1 A. Yes.  
2 Q. And I think at one point you told  
3 opposing counsel that at least ten times you had  
4 not raised thresholds when a store was hitting its  
5 threshold, I guess. Do you recall that testimony?  
6 A. Correct, yes.  
7 Q. When you said that at least ten times  
8 you had not raised the threshold of a store that  
9 was hitting its threshold, did you mean every time  
10 the stores hit their thresholds, they raised their  
11 thresholds except those ten times?  
12 A. No. I meant that if a store reached out  
13 to me and said we can't get a product, and they  
14 weren't even aware of a threshold, but I get that  
15 report that was shown to me, at least ten times I  
16 would have just -- no matter what the reason was.  
17 Most of the time it was because we were getting  
18 close to the end. I just would not okay an  
19 increase in threshold. The majority of the time I  
20 get that report and just delete it. I wasn't a  
21 fan of increasing thresholds.  
22 Q. So they would be up against the  
23 thresholds or they would be passing their  
24 threshold and they wouldn't ask you and you  
25 wouldn't ask them.

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1 A. Correct. They didn't know there was a  
2 threshold. They didn't know there was a  
3 threshold. They never asked if there was a  
4 threshold and never asked me to increase the  
5 threshold, so I didn't do it.  
6 Q. So the at least ten times was situations  
7 where they explicitly asked you and you said no?  
8 A. Correct. Specifically called, said we  
9 can't get this. I need you to help me get it.  
10 Q. We can return to Exhibits 11 and 12 for  
11 a moment. Do you recall opposing counsel walked  
12 you through a couple of lines on the pages in  
13 these audit reports or documents that related to  
14 your stores?  
15 A. Yes.  
16 Q. How many stores do you oversee as a PDL?  
17 A. 32.  
18 Q. And there are about -- I think opposing  
19 counsel represented there were about 15 pages of  
20 your stores in here?  
21 A. Correct.  
22 Q. So there's less than a page per store;  
23 is that right?  
24 A. Correct.  
25 Q. And opposing counsel walked you through,

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1 I think, a variety of different products, mostly  
2 hydrocodone combination products and Ritalin  
3 products; is that right?  
4 A. Correct.  
5 Q. A lot of them you said that you could  
6 resolve looking at the explanation provided on the  
7 document; is that right?  
8 A. Yep.  
9 Q. And then there were a handful that you  
10 said might require further investigation or a DEA  
11 106?  
12 A. Correct.  
13 Q. What does it tell you that there were a  
14 lot on here that related to -- that raised  
15 issues -- strike that.  
16 What does it tell you -- what does it mean to  
17 you that there are lines on this report that are  
18 resolved in the report or that you can resolve  
19 simply by looking at the report?  
20 MR. HUDSON: Object to the form.  
21 BY MR. KOBRIN:  
22 Q. Strike that.  
23 We saw a lot of different amounts that the  
24 count was off. Some of them were off by one.  
25 Some of them were off by as much as 90; is that

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1 right?  
2 A. Yes.  
3 Q. And some of them you said were off  
4 because there's a tablespoon or less that's going  
5 to stick to the container; is that accurate?  
6 A. Correct. It's the same medicine over  
7 and over. It's a thick cough medicine.  
8 Q. So those seem to be small discrepancies;  
9 is that accurate?  
10 MR. HUDSON: Object to the form.  
11 BY MR. KOBRIN:  
12 Q. Are those discrepancies significant to  
13 you?  
14 A. No.  
15 Q. What does it mean that there are  
16 discrepancies that aren't significant to you that  
17 are in this report?  
18 A. It tells me that Giant Eagle has these  
19 stringent guidelines in place to capture every  
20 little thing down to a tablespoon of liquid that  
21 in the big picture is totally irrelevant because  
22 we're eyeballing something.  
23 Not only does it capture a tablespoon of  
24 liquid. It itemizes it, makes you put a reason in  
25 why. And for the majority of the time, there's no



<p style="text-align: right;">Page 166</p> <p>1 discrepancy. We know where it's at, and we don't                  2 have a loss.                  3 Q. Some of them were as high as 90 as we                  4 just said or even higher in some cases. How                  5 many -- strike that.                  6 How many pills do your pharmacies dispense                  7 each month?                  8 A. Well, let's put it this way. My 32                  9 stores a week dispense -- last week they dispensed                  10 450,000 scripts. And if they were all just                  11 scripts for ten, it's thousands and thousands and                  12 thousands and thousands of pills.                  13 Q. So being off by one or two or a                  14 tablespoon or even being off by amounts in the 10s                  15 and 20s or even higher, is that a significant                  16 loss? Is that a significant margin of error?                  17 A. No. It's not a significant loss when                  18 you're talking -- that's what they're calling for.                  19 Because if you using thousands of tablets and                  20 you're down ten, it's not a significant loss.                  21 Q. You mentioned that for the few that                  22 opposing counsel identified where the issue could                  23 not be resolved by looking at the document, that                  24 Giant Eagle would fill out a DEA 106 form; is that                  25 right?</p>	<p style="text-align: right;">Page 168</p> <p>1 report significant --                  2 A. Significant losses, yeah.                  3 Q. That's what they say?                  4 A. That's why I keep using that word. It's                  5 not a Giant Eagle thing. That's from the DEA                  6 website.                  7 Q. After you fill out the 106, is Giant                  8 Eagle done with its issue here --                  9 A. No.                  10 Q. -- with resolving the numerical                  11 discrepancy?                  12 A. No. We have people run reports in the                  13 background of everything we ordered from whether                  14 it's Anda, our warehouse, or whatnot. We go                  15 through all dispensings, make sure all that is                  16 added up.                  17 There was an example in here where that one                  18 script was missing that we were supposedly short                  19 90, but the script was missing. So we weren't                  20 short 90. There's times where they dispense                  21 something. We have minus. We should have zero.                  22 We should have ten. They dispense -- the script                  23 is for 90. We have 10. So we're down 80 on the                  24 report, but then the next day it comes in. So                  25 we're back to even again.</p>
<p style="text-align: right;">Page 167</p> <p>1 MR. HUDSON: Object to the form. It                  2 mischaracterizes the testimony and the evidence.                  3 You can answer.                  4 THE WITNESS: We fill out a 106 form.                  5 That's the procedure we're supposed to follow;                  6 correct.                  7 BY MR. HUDSON:                  8 Q. So for the ones that were unresolved and                  9 were significant, would you fill out an 106?                  10 THE WITNESS: Those are the ones, not                  11 all. Not all the unknowns are filled out, just                  12 the ones that we deem are significant losses.                  13 That starts the process, 106. We don't wait for                  14 any investigation. We fill the 106 form out, get                  15 it in, which can be amended later when we find                  16 them.                  17 BY MR. KOBRIN:                  18 Q. And that significance test, is that                  19 something that Giant Eagle created or is that                  20 something --                  21 A. It's something the DEA keeps it gray.                  22 If you feel that that number is a significant                  23 number of the tablets you dispensed, then get it                  24 in.                  25 Q. So the DEA says they only want you to</p>	<p style="text-align: right;">Page 169</p> <p>1 LP gets involved. Rick Shaheen will come                  2 out. He comes out to any store. We ask him to                  3 come out to look at cameras, to do investigations.                  4 Two instances come to mind right now where we                  5 actually saw the pharmacist while he's talking to                  6 another team member take the bottle of tablets and                  7 just throw them in the garbage can. When we see                  8 that, both times the pharmacist actually went into                  9 the dumpsters at Giant Eagle, not our trash, but                  10 the big huge dumpsters in the parking lot and                  11 found the tablets.                  12 Q. So you were able to the video to show                  13 that a pharmacist inadvertently had thrown them                  14 away?                  15 A. Yeah.                  16 Q. And then that pharmacist went out and                  17 got them?                  18 A. He went out, yeah.                  19 Q. So this is after this. You guys kind of                  20 work to resolve it and then do you contact the DEA                  21 and say you found it?                  22 A. Well, I close out that other form I was                  23 telling you about. We email Lynne and say this                  24 closes out. What happens from that point on is                  25 the office. I don't know after that.</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. And you mentioned LP. What is LP?</p> <p>2 A. Loss prevention.</p> <p>3 Q. And they're the people who kind of help</p> <p>4 you research all these issues at the next level?</p> <p>5 A. Yes.</p> <p>6 Q. I think we're all set.</p> <p>7 MR. KOBRIN: Pass the witness.</p> <p>8 RE-EXAMINATION</p> <p>9 BY MR. HUDSON:</p> <p>10 Q. In terms of scripts rejected, you</p> <p>11 testified that it happens weekly. Is that just</p> <p>12 your sense from, as you sit here today, the best</p> <p>13 of your recollection?</p> <p>14 A. It's my sense of just from me being in</p> <p>15 the store from the time period we're talking, to</p> <p>16 conversations about compliance with my team</p> <p>17 members, what are some of the reasons we're</p> <p>18 turning away scripts.</p> <p>19 Q. Is there any reason why Giant Eagle</p> <p>20 couldn't have kept a scripts rejected log or</p> <p>21 written down on the computer system or somewhere</p> <p>22 each instance where a prescription was rejected</p> <p>23 and the reason it was rejected?</p> <p>24 MR. KOBRIN: Object to the form.</p> <p>25 THE WITNESS: There would be no reason</p>	<p style="text-align: right;">Page 172</p> <p>1 doesn't look right to me. I'm not filling this</p> <p>2 script. In my professional judgment, this isn't</p> <p>3 legitimate. Here's the name and what they were</p> <p>4 trying to fill and then the reason for rejecting</p> <p>5 it is because this doesn't look legitimate to me</p> <p>6 and I think it's a possible risk of diversion.</p> <p>7 Is there any reason why Giant Eagle</p> <p>8 pharmacists couldn't as a matter of practice have</p> <p>9 kept a log of prescriptions where they decided not</p> <p>10 to fill them?</p> <p>11 MR. KOBRIN: Object to form.</p> <p>12 THE WITNESS: I don't know. I don't</p> <p>13 know why we would ever look at that log. I do not</p> <p>14 know what purpose it would serve. We've already</p> <p>15 determined we're not filling it.</p> <p>16 BY MR. HUDSON:</p> <p>17 Q. Well, one purpose would just be to have</p> <p>18 some sense, as we sit here today, of how many</p> <p>19 prescriptions there were that were at risk of</p> <p>20 diversion that were rejected; right?</p> <p>21 MR. KOBRIN: Object to form.</p> <p>22 THE WITNESS: It would help you here</p> <p>23 today, yes. It would help what you're trying to</p> <p>24 go after. It would help. But it wouldn't give us</p> <p>25 anything.</p>
<p style="text-align: right;">Page 171</p> <p>1 to keep a log like that. You're determining</p> <p>2 whether you're going to fill something or not fill</p> <p>3 it. You make the determination. You can put into</p> <p>4 the computer refilled too soon or whatnot. If you</p> <p>5 take the script back, there's no record in the</p> <p>6 computer of the script.</p> <p>7 BY MR. HUDSON:</p> <p>8 Q. Right. All I'm saying is in the</p> <p>9 computer system or somewhere could Giant Eagle</p> <p>10 keep a log of scripts that were rejected due to</p> <p>11 suspicion of diversion?</p> <p>12 MR. KOBRIN: Object to form.</p> <p>13 THE WITNESS: No, because some of those</p> <p>14 don't even get into our system. If you bring a</p> <p>15 piece of paper to me and I do everything that we</p> <p>16 spoke about here for the last -- since 1:00 or</p> <p>17 2:00, that prescription might not get dropped</p> <p>18 through our system and even get in the system. So</p> <p>19 there's no record of the prescription even there.</p> <p>20 We just hand it back to you. You take it away.</p> <p>21 BY MR. HUDSON:</p> <p>22 Q. Right. I guess what I'm saying is, is</p> <p>23 there any reason why Giant Eagle couldn't keep a</p> <p>24 log of some kind or a repository, like you take</p> <p>25 the script and you go, this thing, this just</p>	<p style="text-align: right;">Page 173</p> <p>1 BY MR. HUDSON:</p> <p>2 Q. Well, it would help Giant Eagle, too,</p> <p>3 because if you said that weekly -- it's your sense</p> <p>4 that weekly pharmacists within your territory are</p> <p>5 rejecting filling prescriptions, you could go to</p> <p>6 that rejected prescription log and look at it.</p> <p>7 And then we'd be able to say, yeah, Pennsylvania</p> <p>8 is right. Look down the log. Every week there's</p> <p>9 a pharmacist that's not filling a prescription.</p> <p>10 MR. KOBRIN: Object to form.</p> <p>11 Argumentative.</p> <p>12 THE WITNESS: That was my response. It</p> <p>13 would help your case, but it wouldn't do anything</p> <p>14 for me. I would never have to see that. They</p> <p>15 didn't fill the script. They did what they're</p> <p>16 supposed to do.</p> <p>17 BY MR. HUDSON:</p> <p>18 Q. Were you ever concerned or to your</p> <p>19 knowledge was anyone at Giant Eagle ever concerned</p> <p>20 about diversion of opioids?</p> <p>21 A. All of Giant Eagle is concerned. Any</p> <p>22 pharmacist, any pharmacy is concerned about</p> <p>23 diversion of opioids.</p> <p>24 Q. Would keeping records and trying to</p> <p>25 track the reasons why prescriptions are not filled</p>

<p style="text-align: right;">Page 174</p> <p>1 potentially serve a role to Giant Eagle in 2 becoming better at preventing diversion? 3 MR. KOBRIN: Object to form. 4 THE WITNESS: I don't believe it would. 5 BY MR. HUDSON: 6 Q. Similarly, on Exhibits 11 and 12, when 7 you look at the line items, there's well over a 8 hundred, probably a couple hundred line items from 9 pharmacies in your territory of inventory 10 discrepancies just for these two months, right -- 11 MR. KOBRIN: Object to form. 12 BY MR. HUDSON: 13 Q. -- that we've looked at? 14 A. We looked at about 20 discrepancies. 15 The rest of the report are all resolved issues. 16 Q. Well, let's look at back then at 17 Exhibit 11. We looked at 20 discrepancies where 18 the reason for it was unknown; right? 19 MR. KOBRIN: Object to form. If we're 20 going to say 20, we should know what we're talking 21 about here. 22 BY MR. HUDSON: 23 Q. We went through. The record is what is. 24 We went through them; right? Whatever it is it 25 is.</p>	<p style="text-align: right;">Page 176</p> <p>1 territory where the count at the store was off. 2 In other words, the expected count -- when 3 they went to audit it, the expected count was 4 different than the actual count. 5 MR. KOBRIN: Object to form. 6 THE WITNESS: No, based on counting of 7 certain NDCs as we discussed. But the majority 8 that I'm looking at out of the ones you just read 9 have all been resolved. 10 I don't want to keep going around and around 11 in circles. But the 20 that we spoke about that 12 were unresolved or unknown were issues. No action 13 is needed here. This report is working as needed. 14 There's expected. There's an actual. 15 There's a discrepancy. There's a reason why 16 there's a discrepancy. All pills accounted for. 17 BY MR. HUDSON: 18 Q. Where is the column that I look at that 19 says issue resolved? 20 A. Discrepancy, we are 20 short on this NDC 21 because we were 20 over on the other NDC. 20 22 over. Under is zero. We have the right amount. 23 Q. Which we used to get rid of? 24 A. Yeah. 25 Q. So in your mind, as you sit here today,</p>
<p style="text-align: right;">Page 175</p> <p>1 A. We looked at some. We looked at some. 2 Q. Right. There were a number that we 3 walked through where the reason for it was 4 unknown; right? But in these two reports, in each 5 report there's well over a hundred discrepancies 6 that are being reported by pharmacies that are in 7 your territory; correct? 8 MR. KOBRIN: Object to form. 9 THE WITNESS: No. I don't know where 10 that number is coming from. 11 BY MR. HUDSON: 12 Q. Let's look at Exhibit 11 then. We're 13 going to look on the left. The specialist is Fred 14 Bencivengo. If we look down the first page, we've 15 got 23. If you go to the next page, 35. I mean, 16 you just go on down. It's pages; right? 17 Then we go to the third page, the next page, 18 every one of these line items are a discrepancy 19 where the inventory count is off; right? 20 MR. KOBRIN: Object to form. 21 BY MR. HUDSON: 22 Q. We're up to page 7. We keep going. 23 Page 8, page 9, page 10, page 11, page 12, page 24 13, page 14, page 15, up through half of page 16, 25 those are all pharmacies that were in your</p>	<p style="text-align: right;">Page 177</p> <p>1 your view is that that discrepancy is resolved? 2 A. Yes. 3 Q. But up until the point that they used 4 one product to get rid of the other product, at 5 some point in time, that inventory count was off? 6 A. Perpetual, yeah, on paper. 7 Q. Right. That's all I'm getting at, is 8 the idea that the inventory count or the inventory 9 system was beyond there being any issues and that 10 there was this closed system where the count was 11 tracked closely all the way through until the 12 prescription was filled. 13 All I'm getting at is Giant Eagle created 14 this system to do an audit, and at least in the 15 two months that we've looked at, the audit report 16 generated well over a hundred items each month 17 where there's a discrepancy between what was 18 expected to be there and what was actually there? 19 MR. KOBRIN: Object to form. 20 BY MR. HUDSON: 21 Q. Do you agree with that or disagree with 22 that? 23 MR. KOBRIN: Object to form. 24 THE WITNESS: I disagree with it based 25 on -- we're saying two separate things. The</p>

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1 inventory -- I don't care about the discrepancy  
 2 report. The inventory is there. We're expected  
 3 to have it. We have it. But we have an  
 4 explanation. We also have a report -- we also  
 5 have this other -- like we're 20 short in NDC  
 6 because we're 20 over.  
 7 We also have -- we also have an NDC that we  
 8 shouldn't have any that we have 20. So the math  
 9 works. They found it. That's the purpose of  
 10 this, to make sure that we have the correct number  
 11 of tablets, not the correct number of NDC, just  
 12 the correct number of tablets.  
 13 BY MR. HUDSON:  
 14 Q. Somebody at Giant Eagle though decided  
 15 to come up with this audit program, and it's  
 16 flagging well over a hundred issues. Can we agree  
 17 with that?  
 18 A. Yes.  
 19 Q. Now, when you talked about thresholds,  
 20 do you know, do you have any sense, even a  
 21 ballpark idea, of how many times stores within  
 22 your territory were up against hitting thresholds  
 23 each month over the 12 years you were a PDL?  
 24 A. No.  
 25 Q. I don't believe I have any further

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1 questions. Thank you for your time.  
 2 RE-EXAMINATION  
 3 BY MR. KOBRIN:  
 4 Q. One quick question. Opposing counsel  
 5 just raised the fact that someone came up with  
 6 this program and it's flagging over a hundred  
 7 issues. You noted that a lot of those issues were  
 8 resolved; is that right?  
 9 A. Correct.  
 10 Q. What does that tell you about the system  
 11 that's flagging all the issues even though they're  
 12 resolved?  
 13 A. It's collecting everything. We don't  
 14 have to have a report that shows us this. We're  
 15 overkilling. If the purpose of keeping -- if the  
 16 purpose is diversion, preventing diversion, then  
 17 we're doing it.  
 18 We're caught up on NDC numbers, but we have  
 19 the right amount of stuff in the pharmacy, and  
 20 that's what this report is telling me. That's why  
 21 I look at the report. He counted 14 or 20 on  
 22 here. Mostly every single one of those were  
 23 accounted for. There were no issues on this  
 24 report.  
 25 Q. Is this a good record of what's

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1 happening at the pharmacy?  
 2 A. Yes.  
 3 Q. Thank you. No further questions.  
 4 RE-EXAMINATION (Continued)  
 5 BY MR. HUDSON:  
 6 Q. When you say this is a good record of  
 7 what's happening at the pharmacies, what do you  
 8 mean by that?  
 9 A. It shows that we're in control of the  
 10 inventory.  
 11 Q. Where do I look on that report to see  
 12 that everything that's supposed to be in the  
 13 pharmacy is in the pharmacy?  
 14 MR. KOBRIN: Object to form.  
 15 THE WITNESS: This discrepancy, we've  
 16 covered it. My answer is not going to change.  
 17 BY MR. HUDSON:  
 18 Q. I understand. I'm just trying to figure  
 19 out from that report how you reach the conclusion  
 20 that the system is working when we went over a  
 21 number of items where the explanation for the  
 22 discrepancy is unknown. We only looked at two  
 23 reports from two months.  
 24 MR. KOBRIN: Object to form.  
 25 Argumentative. Asked and answered.

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1 THE WITNESS: I've already answered that  
 2 question. I don't know what else to add to that.  
 3 BY MR. HUDSON:  
 4 Q. I just want to give you another chance  
 5 if there's anything you can think of as to why it  
 6 is in your mind you think that those reports  
 7 indicate that Giant Eagle was dealing with all of  
 8 the issues to prevent diversion when we went  
 9 through several -- a lot of items on each one of  
 10 the reports and the reason for the discrepancy was  
 11 unknown and they were hydrocodone combination  
 12 products.  
 13 MR. KOBRIN: Object to form.  
 14 Misrepresents the record. Argumentative.  
 15 THE WITNESS: That's not factual. We  
 16 went through about 20. Some were hydrocodone.  
 17 Some were Ritalin. Some were dextromethorphan.  
 18 So yes, there were some on there, but there were a  
 19 lot of others on here that are unresolved.  
 20 MR. HUDSON: No further questions.  
 21 THE VIDEOGRAPHER: This marks the end of  
 22 the testimony of Fred Bencivengo. We are going  
 23 off the record. The time is approximately  
 24 7:00 p.m.  
 25 (Whereupon, at 7:00 p.m., the taking of



Page 182	Page 184
1 the instant deposition ceased.)	1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A 2 COUNTY OF ALLEGHENY ) S H E E T
3	2
4	3 I, FRED BENCIVENGO, have read the foregoing
5	4 pages of my deposition given on January 22, 2019,
6	5 and wish to make the following, if any,
7	6 amendments, additions, deletions or corrections:
8	7 Page Line Change and reason for change:
9	8 _____
10	9 _____
11	10 _____
12	11 _____
13	12 _____
14	13 _____
15	14 _____
16	15 _____
17	16 _____
18	17 _____
19	18
20	19 In all other respects, the transcript is true and
21	20 correct.
22	21 _____
23	22 FRED BENCIVENGO
24	23 _____ day of _____, 2019.
25	24 _____
	25 Notary Public

  

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1 COMMONWEALTH OF PENNSYLVANIA ) 2 COUNTY OF ALLEGHENY ) SS: 3 C E R T I F I C A T E 4 I, Ann Medis, Registered Professional 5 Reporter, Certified Livenote Reporter and Notary 6 Public within and for the Commonwealth of 7 Pennsylvania, do hereby certify: 8 That FRED BENCIVENGO, the witness whose 9 deposition is hereinbefore set forth, was duly 10 sworn by me and that such deposition is a true 11 record of the testimony given by such witness. 12 I further certify the inspection, 13 reading and signing of said deposition were not 14 waived by counsel for the respective parties and 15 by the witness. 16 I further certify that I am not related 17 to any of the parties to this action by blood or 18 marriage and that I am in no way interested in the 19 outcome of this matter. 20 IN WITNESS WHEREOF, I have hereunto set 21 my hand this 25th day of January, 2019. 22 23 _____ 24 Notary Public 25